

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36413
Docket No. CL-37021
03-3-01-3-649**

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12780) that:

1. Carrier violated Rules 10, 24, and other related rules of the Agreement between Amtrak and TCU when, by letter dated January 19, 1998 it terminated the employment of Claimant Charles Schembri.
2. Carrier will now be required to reinstate Claimant for all pay service with all seniority rights intact.
3. Carrier shall now be required to compensate Claimant for all pay lost due to Carrier's violation of the Agreement.
4. Carrier further violated Rule 25(a) of the agreement when it failed to properly respond to the claim and give a reason for disallowance of the claim as required by the Rule. As a result of this violation Carrier shall now be required to pay the claim as presented as mandated by the Rule."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant Charles Schembri was hired as an unassigned Clerk on Amtrak in Sacramento, California, on June 18, 1996. On November 9, 1996, the Claimant went on a Medical Leave of Absence. By January 19, 1998, he had not returned to service for the

Carrier. On that date, the Carrier sent him the following Certified Letter, Return Receipt Requested:

**"CERTIFIED MAIL Z242 331 548
Return Receipt Requested**

January 19, 1998

**Charles M. Schembri
748 Aries Lane
Foster City, CA 94404**

SSN 553-66-5243

Dear Mr. Schembri:

In accordance with your current T.C.U. governing agreement, specifically Rule 10 which reads in part: 'The seniority of any employee whose seniority under this agreement is established after April 15, 1986 and who is both unassigned and performs no compensated service for 365 consecutive days will be terminated if such employee has less than three (3) years seniority.'

Inasmuch as you have not performed any compensated service since November 8, 1996, your employment with the National Railroad Passenger Corporation is terminated effective immediately. Please return any company property you may have in your possession.

Very truly yours,

**R. L. Jones
Service Manager**

**cc: J. W. Deely
L. J. Commer
R. P. Cota, TCU 2506 Chairman
Personnel
File"**

On April 23, 1998, Mike Davis, Vice General Chairman filed the instant claim with R. L. Jones, Amtrak Service Manager, in Sacramento, California. It contended that the Claimant was improperly terminated and cited a number of arguments on his behalf. The Carrier did not respond to the claim. On July 21, 1998, Vice General Chairman Davis sent the following letter to the Amtrak Division Manager, Labor Relations:

"July 21, 1998

**Mr. Thomas W. Fleming
Division Manager, Labor Relations
National Railroad Passenger Corp.
800 North Alameda Street
Los Angeles, California 90012**

**File #393-VW8-028
Schembri, Charles
SSN 553-66-5243**

Dear Mr. Fleming:

This is in reference to the above numbered claim filed by the undersigned on April 23, 1998. A copy of said claim is enclosed for your ready reference.

As of this date the organization has received no reply to this claim, and accordingly it is now payable per Rule 25 of the current Agreement. Please arranged for Claimant Schembri to return to service and be compensated for all time lost.

Sincerely,

Mike Davis, Vice General Chairman

**cc: P. Davis
L. Jones
Claimant
File"**

The claim was reviewed in conference on November 17, 1999. The Carrier responded to the Organization's claim in a detailed letter dated November 23, 1999. The claim, however, was progressed by the Organization to the Board for final resolution.

The Board reviewed the record in detail and has concluded as follows:

- 1. The Carrier was correct in concluding that the leave of absence granted the Claimant did not qualify as an assigned period under Rule 10 of the Agreement.**
- 2. The Claimant did not perform any compensated service after November 8, 1996. The January 19, 1998, letter terminating the Claimant's employment under Rule 10 was more than 365 consecutive days after the Claimant last performed service for Amtrak.**
- 3. Rule 10, Section (F) is a self-executing Rule. It reads as follows:**

"The seniority of any employee whose seniority under this agreement is established after April 15, 1986 and who is both unassigned and performs no compensated service for 365 consecutive days will be terminated if such employee has less than three (3) years seniority."

The conditions of the Claimant's employment relationship with Amtrak fits perfectly with all of the terms specified in Rule 10.F.

- 4. The fact that Amtrak did not timely respond to the initial claim filed on April 23, 1998 is not dispositive of this claim as the Organization contends. The original claim was filed 94 days after the January 19, 1998 letter terminating the Claimant was sent. This makes the initial claim untimely by over 30 days.**
- 5. The Organization's argument that even though the Local Chairman was copied on the April 19, 1998 letter, it has no record of him receiving it. The Organization contends that it was not aware of the Claimant being terminated until just prior to April 23, 1998. The Board is not persuaded by this argument or that the Local Chairman did not receive the January 19, 1998 termination letter.**
- 6. While it would have been better for the Carrier to have responded to the Organization's April 23, 1998 claim, the fact that it did not does not give an untimely filed claim validity.**
- 7. Finally, the Board has concluded that the alleged procedural errors by both parties do not change the fact that the Carrier did not violate the Agreement; thus the case is denied.**

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 17th day of March 2003.