

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36743
Docket No. CL-37254
03-3-02-3-276**

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-12814)
that:**

- 1. The Carrier acted arbitrary and in an unfair manner violating Rule 12, 24, Article XIV of the September 06, 1991 Mediation Agreement, Section 10 of the September 02, 1994 Agreement and other related rules of the Agreement. As of May 21, 1998 the Carrier has failed or refused to allow Claimant to return to service off a medical leave of absence, despite her release from her doctor.**
- 2. The Carrier shall be required to immediately compensate Claimant (Sharon Penman) eight (8) hours at the Baggagehandler straight time rate of pay for each day she is held from service until the dispute is resolved. Baggagehandler is the last position held by claimant prior to being injured on the job.”**

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.

At the time of the incident that gave rise to this dispute, the Claimant was employed by the Carrier as a Baggagehandler. On December 4, 1996, the Claimant reported an on-the-job injury. She was absent from work, but was cleared to return to duty on April 1, 1997. She failed to report for the return-to-work physical or call in. No medical paperwork was provided supporting her absence. On April 8, 1997, Amtrak received a work status report indicating that the Claimant was unable to work as of March 17, 1997, and she was scheduled for surgery April 18, 1997 for lateral epicondylitis, with reevaluation scheduled for April 21, 1997. The Claimant failed to contact the Carrier after that point concerning her condition. On September 9, 1997, five months after being notified of the Claimant's condition, the Carrier advised the Claimant by letter that medical information justifying her leave must be provided by September 18, 1997. The letter was returned unclaimed on October 2, 1997.

On September 19, 1997, the Claimant was sent a letter to the same address notifying her that she was considered resigned under the Abandonment of Position Rule. The letter was signed for by Estelle Pulphus on October 1, 1997. A copy of the letter was sent to the Organization and received on September 22, 1997.

A claim was filed on the Claimant's behalf on December 6, 1997, requesting that she be placed back on the seniority roster with rights unimpaired. The Carrier denied the claim at all levels. The case has been placed before the Board for final adjustment.

The Board has reviewed the record in detail. As a result of that review, the Board has concluded that the Claimant did not properly inform the Carrier of her medical condition from December 4, 1996, the date of her on-duty-injury, until she

was removed from the seniority list on September 19, 1997. Through her own actions, the Claimant ran afoul of Section 10 of the September 2, 1994, Agreement, the Abandonment of Position Rule. That Rule is quoted below:

“An employee, not on an authorized leave of absence, who is absent from his/her assignment for more than 15 calendar days without notifying his/her supervisor will be considered as having resigned and will be removed from the seniority roster. However, if the employee can show that he/she was medically and mentally incapacitated during the entire absence, the employee's seniority will be restored unless dismissed for other reasons. Prior to terminating an employee's seniority a letter must be sent by certified mail to the employee's address of record requesting that the employee immediately contact his/her supervisor.”

The Carrier met its obligation under this Rule. The Claimant did not meet any of her obligations. The Carrier did not act in an arbitrary or capricious manner in this instance. It applied the Rule as written.

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 22nd day of October 2003.