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NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37148
Docket No. MW-37225
04-3-02-3-204

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The seniority termination of Mr. A. Williams effective August 9, 2001 for allegedly being absent from work without notifying his supervisor was unwarranted and in violation of the Agreement (System File NEC-BMWE-SD-4120 AMT).
- (2) As a consequence of the violation referred to in Part (1) above, Mr. A. Williams shall now '*** be reinstated immediately with full seniority, benefits and all back pay, including lost overtime, from the date of the Certified letter addressed to Mr. Williams, to the date Mr. Williams returns to service.'”

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.

This claim protests the Carrier's action in notifying the Claimant, a new England B&B Mechanic, that he was terminated under the self-invoking provisions or Rule 21-A for absenting himself for 14 consecutive days after July 17, 2001 without notifying his supervisor. The record reflects that the Claimant notified his supervisor and foreman that his home and personal possessions had burned down on May 26, 2001 and that he could not report to work each day because he had no place to live and was moving around with his family until he could find someplace. He was told to do what he had to do. Between May 26 and July 17, 2001, the Claimant worked 9 days and was absent 26 days. He failed to report or call his supervisor after July 17, 2001. After over 14 consecutive days absence, the Carrier sent the Claimant a notification that it considered him to have resigned and was terminating his seniority under Rule 21-A. The Claimant responded to such letter in writing indicating that he had told his supervisor that he would be out of work until he found a place to live and then would be back, claiming that he had found permanent residence in the Boston area as of August 24, 2001.

The Organization argues that the Claimant did notify his supervisors of his personal hardship and why he could not regularly attend work, he had the authority of his supervisor to attempt to provide for his family as best he could and absent himself from work, and that the provisions of Rule 21-A should not be invoked to terminate someone due to these unfortunate circumstances. It asserts that the Carrier should have further investigated before terminating the Claimant.

The Carrier contends that it gave the Claimant a lot of opportunity after his loss on May 26 to attend to personal matters, and his supervisors showed compassion by permitting him to be excessively absent between May 26 and July 17, 2001. The Carrier asserts that after July 17 the Claimant made no effort whatsoever to contact the Carrier to indicate his intentions or whereabouts, and the Carrier was not able to get in touch with him. The Carrier argues that Rule 21-A was negotiated by the parties to be self-executing, and obligates it to treat the Claimant as having resigned after 14 consecutive days absence without notification, citing Special Board of Adjustment No. 986, Case 58 as upholding the reasonableness of this interpretation and its application in this case.

A careful review of the record convinces the Board that the Organization has not met its burden of proving that the Carrier violated the Agreement in this case. Initially we note that the Organization cited no particular provisions of the Agreement that the Carrier was alleged to have violated. The Organization pursued this claim as one in which the Carrier's actions were unnecessarily harsh because it had knowledge of the reason why the Claimant could not regularly attend work and his supervisor's statement that he should do whatever he had to do was implicit permission for such absence.

The evidence does support the finding that the Claimant informed his supervisor and foreman on May 26 that his house had burned down and that he was looking for other permanent residence while moving around with his family, to which his supervisor responded that he should do whatever he had to do. However, the fact remains that the Claimant was granted much leeway to take care of his personal situation without adverse action during the following seven weeks, and his sporadic attendance kept the Carrier informed of his progress and desire to remain employed. The Organization offered no evidence to indicate that the Claimant informed his supervisor that he would be absent for an extended period of time after July 17 and obtained permission not to report or make any effort to come to work or call to notify the Carrier of the progress he was making in getting relocated. The Board upheld the reasonableness of the Carrier enforcing the self-invoking provisions of Rule 21-A when an employee is absent for 14 consecutive days without notifying his supervisor of the reasons. Special Board of Adjustment No. 986, Case 58. Unfortunately for the Claimant, he met those criteria and the Organization failed to show that he was somehow incapable of notifying the Carrier during this period of his whereabouts and intentions. The Carrier had no method of getting in touch with the Claimant to further investigate. Under the circumstances, we are unable to conclude that the Organization sustained its burden of proving that the Carrier violated the Agreement by relying upon Rule 21-A in this case.

AWARD

Claim denied.

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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 25th day of August 2004.