

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 39292
Docket No. CL-40008
08-3-NRAB-00003-070211
(07-3-211)

The Third Division consisted of the regular members and in addition Referee Steven M. Bierig 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-13178) that:

- (a) Carrier violated Rules 24, 5 and others when it terminated Employee Susan Freeman under Rule 5 of the October 1, 2003 Agreement.
- (b) The Organization now requests that Ms. Freeman be reinstated with all seniority rights intact and compensation including potential overtime Ms. Freeman could have earned during the period in question. This amount would also include reimbursement for any medical expenses incurred by Claimant which would have been covered by the Carrier’s medical insurance underwriter.”

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 leading to her discharge, Claimant Susan Freeman was working as a Ticket Sales Clerk in the Los Angeles District. The record indicates that on January 23, 2004, the Claimant was placed on a leave of absence until further notice. On May 13, 2005, the Claimant's request for leave under the FMLA was denied because she did not meet the criteria. By letter dated May 13, 2005, the Claimant was granted a conditional certification and was instructed to provide appropriate documentation by May 28. As of June 2, Amtrak's Human Resource Office advised Management that the Claimant's leave was denied because the Claimant did not return to work and no documentation was provided.

By letter dated June 9, 2005, the Carrier notified the Claimant that because she had not submitted proper documentation to substantiate her leave of absence, her employment was terminated immediately pursuant to Rule 21(c). On July 31, 2005, the Organization appealed her termination, indicating that the Claimant was unaware of the proceedings against her because she was caring for her mother, who had been stricken with Alzheimer's. In addition, the Organization contended that the Claimant's mother had received the mail requesting the information and had hidden it from her daughter. The Organization sought immediate reinstatement of the Claimant. The claim was denied by the Carrier. On December 31, 2005, the Organization appealed the claim. On February 23, 2006, the appeal was rejected by Labor Relations Officer Elias Munoz. On March 4, 2006, the matter was appealed to Director Labor Relations L. D. Miller who rejected the appeal on July 17.

Rule 21(c) provides:

"An employee who fails to report for duty at the expiration of a leave of absence shall forfeit his seniority rights and be considered out of service unless the employee presents sufficient proof that circumstances beyond his control prevented such return. In such cases, the leave will be extended to include the delay."

The Organization claims that the Claimant was undergoing hardships and requests that the termination be rescinded and that the Claimant be made whole for all losses. In this case, the Claimant was unaware that the request for information was received and was unable to present the relevant documentation. She claims that her mother received the documentation and did not provide it to the Claimant. The situation was beyond the Claimant's control.

Conversely, Amtrak takes the position that Rule 21(c) is self-enforcing and that when the Claimant neither appeared at work nor presented the relevant information, she was properly terminated. Amtrak argues that once it had established that the Claimant was not present for work or that the Claimant did not present relevant documentation, the burden shifted to the Organization. Amtrak contends that the Organization failed to present sufficient evidence to prove that the Claimant should not have been removed. Amtrak contends that the Termination should not be disturbed.

After a review of the evidence, the Board sustains the claim in part and denies the claim in part. While the Claimant may have known of the request for information, it is also clear that the Claimant was undergoing a very difficult personal situation involving her parent's illness. It is very possible that the requests for information were received by the Claimant's mother, but not transmitted to the Claimant for processing. In light of this situation, we conclude that the Claimant shall be reinstated with seniority unimpaired, but without any backpay.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 29th day of September 2008.