

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 43600  
Docket No. MS-44405  
19-3-NRAB-00003-170529**

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

(Jeffrey Delago

**PARTIES TO DISPUTE:** (

(National Railroad Passenger Corporation (AMTRAK)

**STATEMENT OF CLAIM:**

- “ • A violation of Collective Bargaining Agreement between Amtrak and the Brotherhood of Maintenance of Way Employees, Rule 21-A which states: ‘Employees who absent themselves from work for fourteen (14) consecutive days without notifying their supervisor shall be considered as having resigned from the service and will be removed from the seniority roster unless they furnish the Carrier documented evidence of either physical incapacity or that circumstance beyond their control prevented such notification’. A period unforeseen incarceration caused me to not report to work.
- Lead Labor Relation Specialist, Richard Bush recorded and reported major and some trivial inaccurate facts regarding my ability to contact the carrier such as:
  - ‘Appellant meets regularly with a probation officer’.
  - ‘Placed in isolation until September 15, 2016’.
  - ‘September 22, 2016, he visited with a prison social worker who returned to Appellant his cell phone and personal effects surrendered on intake’.
  - ‘Appellant stated he was released from prison on October 15, 2016’.
- Labor Relations’ Senior Manager, Sharon R. Jindal in her letter dated November 4, 2016, to Jedd Dodd, General Chairman, BMWED-Pennsylvania Federation, conveyed, ‘Based on the foregoing facts established in this case, the Organization and the

Appellant have not met their burden of proof to demonstrate a reason that prevents such notification to Amtrak’.

It is my position that if the facts of this case were accurately recorded and reported, Miss Jindal would have made on my behalf a favorable decision regarding my physical incapacity and the circumstance beyond my control that prevented me from notifying the Carrier.

I will submit to the Board the facts of this case as they were presented to Mr. Bush. I seek the remedy of reinstatement to Amtrak and replacement on the roster in the same seniority position.”

**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.

On August 18, 2016, the Carrier notified the Petitioner, in writing, that his absence from work for more than 14 consecutive days without providing sufficient notice to his supervisor constituted a resignation from service as provided for in Rule 21-A of the Agreement. The Carrier maintains that the Petitioner has not provided any evidence that he was either physically incapacitated or in circumstances beyond his control that prevented him from notifying his supervisor of his inability to report to work.

On September 21, 2016, the Petitioner appealed the Carrier’s decision. The record indicates that the Petitioner was incarcerated due to an outstanding warrant.

The Petitioner argues that upon incarceration he was required to surrender his cell phone and therefore was unable to notify his supervisor within 14 days from the first day of his absence on August 4, 2016 of his inability to appear for duty.

The Board finds that the record establishes that the Petitioner was absent in excess of 14 days without providing the Carrier with notice as required by Rule 21-A. The record does not support the Petitioner's claim that it was beyond his control, directly or indirectly, to notify the Carrier of his prolonged absence during his incarceration.

Rule 21-A is clear and unambiguous in establishing that being absent for 14 consecutive days, without providing the Carrier proper notice, constitutes a constructive resignation and forfeiture of seniority. There is ample arbitral authority that supports a conclusion that Rule 21-A is self-executing when sufficient evidence establishes that the rule was violated.

Based on the foregoing, the Board finds that the record lacks the requisite substantial evidence that the Carrier violated the Agreement.

**AWARD**

Claim denied.

**ORDER**

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

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

Dated at Chicago, Illinois, this 17th day of May 2019.