

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 44773  
Docket No. MS-46595  
22-3-NRAB-00003-210545**

**The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.**

**(S. ANDERSON**

**PARTIES TO DISPUTE: (**

**(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**“In accordance with the prevailing agreement between the Brotherhood of Maintenance of Way Employees and the National Railroad Passenger Corporation; please accept the Organizations Notice of Appeal in connection with the above-referenced dispute.**

**The appellant is assigned as a Trackman in production gang Y-081C.**

**By letter dated November 2, 2020, Carrier's representative Eric Stoneberg offers a misinterpretation of our agreement, denying the appellant the right to work and asserting a violation of Rule 21-A.**

**The Carrier's decision is without substantiation and irrespective of the facts. Denying the appellant, the right to work violates our agreement. This abuse of power has caused the appellant to suffer.”**

**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.

The Claimant held the position of Trackman in production gang Y-081C in the Carrier's service. The Claimant returned from an authorized leave of absence on August 27, 2020. On September 10, 2020, he notified his supervisor that he would not be attending that day. The Claimant did not return to work.

On November 2, 2020, the Carrier sent a letter to the Claimant notifying him that he was in violation of Rule 21-A, Absent Without Permission, which states:

- (a) 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 circumstances beyond their control prevented such notification. In the absence of the supervisor, the employee shall notify the office of the Division Engineer of the division on which last assigned.
- (b) If the Carrier refuses to accept such documented evidence, the employee or his representative may appeal such action in accordance with the appeal procedures of Rule 74 - DISCIPLINE.

The letter acknowledged the Claimant's concerns about COVID-19 and urged him to contact the Medical Services Department to apply for a leave of absence. The Claimant did not contact his supervisor or any member of management. He did not return to work. Another letter was issued on November 18, 2020, stating:

Since September 10, 2020, you have accrued daily codes of 1161, no call/no show. At no time since August 30, 2020, you have not been on any type of approved leave. The last communication between yourself and Amtrak was on the date of November 2, 2020.

Pursuant with Rule 21-A of the BMWED agreement which reads in pertinent part, below, you are considered as having resigned effective the date of this letter. . . .

In a letter dated November 16, 2020, the Organization appealed the Carrier's discipline. Following discussion of this dispute in conference, the Carrier denied the

appeal in a letter dated February 26, 2021. The positions of the parties remained unchanged, and this dispute is now properly before the Board for adjudication.

The Carrier contends that the Claimant was absent for more than 14 days. He was not on a leave of absence. The Carrier contends that it notified the Claimant that he may be considered as having resigned from service and removed from the seniority roster unless he furnished information regarding his absence. There is no evidence that the Claimant responded or reached out to his supervisor.

The Carrier contends that Rule 21-A is a “walkaway rule” which provides that an employee who is absent for the specified number of days will be considered to have resigned unless they can show that they were physically unable to notify the Carrier. The Carrier contends that numerous Boards have upheld the self-invoking nature of the rule.

The Carrier contends that Claimant’s concerns regarding COVID were investigated and found to be without merit. The Carrier contends that there is no reason not to deny his claim, as he has failed to show that Rule 21-A was misinterpreted. Finally, the Carrier contends that it is not clear that the Claimant would return to work under the current conditions, as he has so far refused to do so.

The Claimant concedes that he was absent from work but contends that he was understandably concerned about contracting COVID-19. He points out that he contacted OSHA and the Carrier about his concerns. The Claimant contends that he was following the instructions of his foreman as to how to bring his concerns to management. The Claimant contends that he should have been given authority to drive his own car to the worksite, rather than ride in the Carrier’s van.

The Claimant contends that he was denied the right to work and that he should be returned to work.

Rule 21-A has been termed a “self-invoking” rule. It allows the Carrier to terminate the seniority of an employee who has been absent for 14 days without notifying the Carrier of the reason for the absence. The negotiated rule has expressly been found to be reasonable. Awards 58 and 59 of Special Board of Adjustment 986.

Even after a significant absence, the Claimant was given an opportunity to apply for a leave of absence, but he failed to contact the Carrier or his supervisor. While the Claimant may have felt unsafe at work due to COVID-19, he was not authorized to simply absent himself from his duties without approval from the

Carrier. The Claimant failed to protect his assignment for more than 14 days without notifying a supervisor and failed to take advantage of the opportunity to explain himself. The Carrier was not unreasonable in invoking Rule 21-A and removing him from the seniority roster.

**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 29<sup>th</sup> day of July 2022.