

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - Northeast Corridor

Case No. 179

STATEMENT OF CLAIM:

Appeal of Claimant Calvin Beckwith's self-invoking resignation, as per Carrier's correspondence dated May 11, 1994, and that the Claimant be reinstated to full duties and made whole for all compensation loss. (System File NEC-BMWE-SD-3372.)

FINDINGS:

Claimant Calvin Beckwith was employed by the Carrier as a trackman with its track laying system/travelling gang for approximately three years.

The Claimant was on a medical leave of absence from the service of the Carrier as a result of an on-duty injury that occurred on August 23, 1993. After surgery, Claimant returned to Carrier's work hardening program in late 1993. After three weeks in the program, Claimant informed the Carrier that he would be leaving on January 21, 1994. At that time, his therapist had recommended to his doctor that the Claimant be allowed to return to medium level work.

On or about February 8, 1994, the Claimant sent a fax from Hong Kong to the Amtrak Claims Department informing the Carrier that he was receiving alternative medical treatment there and that he had been cast in a film that would begin production in mid-March. The Claimant stated that the alternative medical treatment would last

approximately two and one-half months. At the end of that period of time, the Carrier contacted the Claims Department regarding the Claimant's medical status and discovered that the Claimant had been medically determined as fit to return to work in a lesser capacity and that his case had been settled on February 28, 1994.

On May 11, 1994, the Carrier notified the Claimant that he was considered to have resigned from the employ of the Carrier as a result of having violated Rule 21-A when, after having been medically determined fit to return to work as of February 28, 1994, he did not report to the Carrier for a return-to-work physical nor did he contact his supervisor to explain the reason for his continued absence within the required time limit. Also, during the course of the Claimant's leave of absence, the Carrier was made aware that the Claimant was allegedly engaged in outside employment involving a film role and he was, thereby, considered by the Carrier to also be in violation of Rule 28(c), resulting in the forfeiture of his seniority.

The Organization appealed on behalf of the Claimant, contending that the Carrier failed in its burden of proof to show the Claimant violated Rules 21-A and 28(c), and this matter is now before this Board.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant violated Rule 21-A, and thereby terminated his seniority pursuant to the Carrier's self-invoking policy. Rule 21-A states as follows:

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 this case, the Claimant was found to be fit for at least medium level work by the University of Pennsylvania Medical Center on January 21, 1994. That recommendation was made by one Jenifer Haines in a letter to Dr. David J. Bozentka. Dr. Bozentka issued a letter on March 8, 1994 stating that he did "not feel that Mr. Beckwith will require any further physical therapy". Consequently, the Claimant was fit to return to work in late February or early March of 1994.

Finally, the record contains a letter dated January 10, 1994, to the Claimant from his manager, Gary L. Graves, which states the following:

This letter is to officially advise you that no up-to-date written documentation from your personal attending physician has been sent to my attention with regards to your on-the-job incident dated August 23, 1993.

Subsequently (sic), you are directed within 5 days from the receipt of this letter to provide such documentation.

In closing, failure on your part to comply with these instructions will subject you to disciplinary action being taken in accordance with the terms of your collective bargaining agreement.

Although the Claimant had been found ready to return to work in January and February of 1994, he failed to return to work for several months after that. Finally, on

May 11, 1994, the Carrier properly applied the self-executing provisions of Rule 21-A.

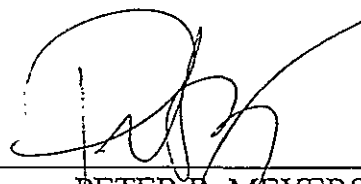
Given the facts of this case, this Board cannot find that the Carrier acted improperly nor that the punishment was unreasonable, arbitrary, or capricious. The Claimant, by absenting himself from work for more than fourteen consecutive days without notifying his supervisor, and by leaving the country and failing to keep the Carrier updated with respect to his present physical condition, constructively resigned his position with Amtrak pursuant to the terms of Rule 21-A and he was properly removed from the seniority roster by the Carrier.

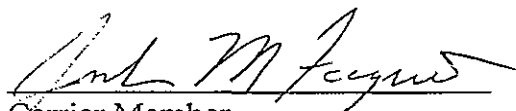
Since this Board has determined that the Claimant was properly considered to have constructively resigned from the Carrier pursuant Rule 21-A, we need not deal with the issues raised with respect to the alleged violation of Rule 28.

Since we find that the Carrier had properly considered to have the Claimant constructively terminated his seniority, we have no choice other than to deny the claim.


AWARD

Claim denied.


 PETER R. MEYERS
 Neutral Member


 Carrier Member

DATED: 2/27/95


 Organization Member

DATED: 3-1-95