

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 57

Docket No. NEC-BMWE-SD-1613

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Agreement when it improperly closed the service record of Mr. V. Freeman (System File NEC-BMWE-SD-1613).
2. Mr. Freeman shall be reinstated to service and he shall be compensated for all wage loss suffered."

FINDINGS:

Claimant V. Freeman was employed by Carrier in its Maintenance of Way and Structures Department. On September 11, 1986, Claimant notified Carrier that he had been hospitalized from September 3 to September 10, 1986; Claimant did not, however, return to service that day. On September 30, 1986, Carrier notified Claimant that:

Due to the fact that you have not returned to duty since September 10, 1986 and we have received no word as to your status, Amtrak considers you as having resigned from the service. You will be removed from the seniority roster. This action is per Rule 21-A of the Agreement between Amtrak and the Brotherhood of Maintenance of Way Employees.

Upon Claimant's appeal, Carrier affirmed its decision to dismiss Claimant. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has thoroughly reviewed the evidence in this case, and we find that the Carrier did not have a sufficient basis on which to invoke Rule 21-A and remove the Claimant from the Service Roster.

The record reveals that the Claimant sustained an on-duty injury in June 1984, which lead to neurological problems. He returned to service but remained under the care of a neurologist. On September 2,

1986, the Claimant reported to work but began to lose his vision in one eye. He eventually was hospitalized on September 3, 1986, and remained there until September 10, 1986. On September 11, 1986, Claimant presented his supervisor with a disability certificate from his doctor verifying the hospitalization from September 3 to 10. The certificate also stated that the Claimant "has been under my professional care . . ." and was signed by Doctor Andree Broussard, M.D. The disability certificate did not release the Claimant to work.

The Claimant alleges that he attempted to present an updated disability notice from Doctor Broussard to his supervisor on September 19, 1986. That disability notice stated that the Claimant was totally disabled until further notice. The Carrier contends that Claimant did not notify his supervisor in any manner during the nineteen days following the September 11, 1986, note, and that is why the Carrier considered him as having resigned effective September 30, 1986, pursuant to Rule 21-A.

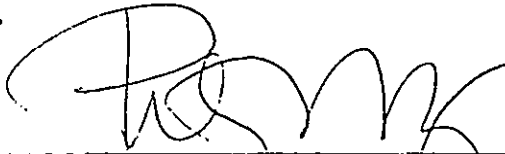
This Board recognizes the importance of Rule 21-A, its self-invoking quality, and that it was developed to allow the Carrier to deal with employees who abandon their jobs and never contact the Carrier to report the reason for their absence. This Board recognizes that rules such as 21-A exist throughout the industry. However, this Board also recognizes that this is not a case of a "walk-away" employee. The Carrier was aware of the Claimant's previous on-the-job injury, as well as the fact that he was being treated by Doctor Broussard and had recently been hospitalized. Although the record is not clear as to whether the September 19, 1986, letter was attempted or allowed to be delivered to the Carrier or not, it is clear that the Carrier knew the state of the Claimant's health, his treating

physician, and of his recent hospitalization. Therefore, under the narrow facts of this case, it was a violation of the agreement for the Carrier to invoke Rule 21 and terminate the Claimant's seniority.

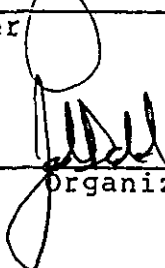
With respect to the claim for wage loss, the record before this Board provides no evidence that the Claimant is physically capable of returning to service at the present time. Certainly, he was not physically capable of returning to service in September 1986. Therefore, the claim for lost wages is denied.

Award:

Claim sustained in part. The Claimant is reinstated to service, but without back pay.

  
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Neutral Member

  
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Carrier Member

  
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Organization Member

Date: 6-18-88