

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 73

Docket No. NEC-BMWE-SD-1727

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 terminated the seniority of Claimant T.R. D'Amico on November 6, 1986 (System File NEC-BMWE-SD-1727).
2. Claimant T.R. D'Amico shall be reinstated with seniority and all other benefits unimpaired and he shall be compensated for all wage loss suffered."

FINDINGS:

Claimant T.R. D'Amico was employed by Carrier in the Track Subdepartment. In July 1986, Claimant was placed on a medical leave of absence. On August 7, 1986, Claimant passed his return-to-duty physical examination, then worked on both August 13 and August 14, 1986. On November 6, 1986, Claimant was notified that because he had neither performed service for the Carrier since August 14, 1986, nor notified the Track Supervisor of the reason for his continuing absence, the Carrier considered Claimant as having resigned from service, pursuant to Rule 21A of the controlling agreement. The Organization thereafter filed a claim on Claimant's behalf, challenging the termination of Claimant's seniority under Rule 21A.

This Board has reviewed the record in this case, and we find that the Carrier acted improperly when it considered the Claimant as having resigned from service pursuant to the self-invoking language of Rule 21-A of the Agreement and terminated his seniority. Therefore, this claim must be sustained in part.

Rule 21-A deals with employees who are absent without permission

and reads as follows:

Absent Without Permission

(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 facts in this case are that in July 1986, the Claimant requested and was granted a medical leave of absence for the purpose of receiving psychiatric care. The Carrier received a letter from Doctor George S. Bell, the Claimant's psychiatrist, dated July 16, 1986, stating that the Claimant had been under Doctor Bell's ongoing psychiatric care. The letter also stated that the Claimant had been unable to work since July 7, 1986, because of depression, that he was hospitalized on July 12, 1986, and was not anticipated to be reached for return to work until mid-August 1986.

It is true that on August 7, 1986, the Claimant took and passed a return-to-work physical following the release by his doctor. The Claimant then returned to work on August 13, 1986, and worked August 13 and 14, 1986. The Claimant never returned to work after August 14, 1986, and the Carrier notified the Claimant on November 6, 1986, that he was being considered resigned from work pursuant to Rule 21-A. The Claimant never contacted the Carrier until his letter dated January 19, 1987, was received by the Carrier's division engineer on January 27, 1987. The Claimant subsequently was granted an appeal hearing and

presented a letter from Doctor Bell dated February 26, 1987, which stated the following:

To Whom It May Concern:

Re: Ted D'Amico

Mr. Ted D'Amico has been under my outpatient psychiatric care for the past several years. From 7/86 through 12/86 he was going through severe personal turmoil which resulted in his separation from his wife and child and a period of hospitalization. During that time his reality testing and judgment was very poor. He started to recover in early 1987 and is now ready to return to work.

Sincerely,

George S. Bell, M.D.
Psychiatrist

The Carrier takes the position that the belatedly submitted letter is general in nature and does not provide documented evidence of physical incapacity or that circumstances beyond Claimant's control prevented notification as required by Rule 21-A. This Board disagrees.

This Board has ruled on several cases involving Rule 21-A and recognizes that it was specifically negotiated to allow the Carrier to deal with the issue of absence from service without notification to the supervisor. This Board recognizes that these rules do not involve discipline, are self-invoking, and that non-notification to the Carrier of an employee's absence is only mitigated under certain, strictly applied situations which are delineated in those rules.

However, this Board has ruled in the past that in a situation that does not involve a "walk-away employee" and the Carrier has been put on notice that the subject employee is suffering from some disability or mental problems, the Carrier bears some burden for

determining the reason for the absence of that employee. This does not mean that the Carrier must attempt to contact every employee who has been absent from work for a period of fourteen days or more. However, in similar situations to the one involved here, where the employee has recently returned from a five-week psychiatric problem-related medical disability leave because of depression involving hospitalization, and has only returned to work for a period of two days before leaving again, the Carrier has the responsibility of attempting to determine if there is some relationship between the lengthy absence that is occurring and the previous medical leave relating to the psychiatric problems of the Claimant. Nothing in the record reveals that the Carrier in this case made any effort to determine if the absence of the Claimant after his two days of work in mid-August 1986 were in any way related to his previous psychiatric disability. Moreover, in February 1987, the Claimant presented a letter from his psychiatrist, the same psychiatrist of which the Carrier was aware, that the Claimant was suffering from severe psychiatric problems beyond his control.

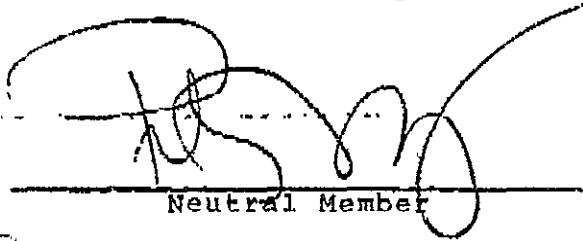
Rule 21-A specifically states that employees who absent themselves from work for fourteen consecutive days without notifying their supervisor shall be considered resigned from service unless they furnish the Carrier documented evidence of physical incapacity or other circumstances beyond their control which prevented notification of the Carrier. That section applies to this case, and the Carrier wrongfully terminated the seniority of the Claimant.

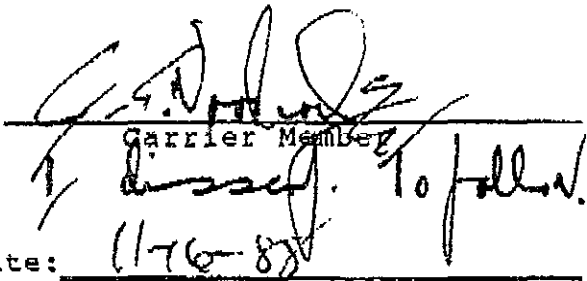
Although the Organization requests that the Claimant be reinstated with all wage losses suffered, this Board must find that

the Claimant shall be reinstated with seniority and with all other benefits, but without back pay. There is nothing in the record before us today that indicates that the Claimant is physically or mentally qualified to return to work. The Carrier is ordered to reinstate the Claimant and schedule a mental and physical examination as soon as possible. If the Claimant passes that examination, he shall be allowed to return to work with seniority and all other benefits unimpaired, but without back pay.

Award:

Claim sustained in part. The Claimant is reinstated to service with seniority and all other benefits unimpaired, but without back pay. The Carrier is ordered to schedule a physical and mental examination for the Claimant; and if he passes, the Claimant shall be returned to work.


Neutral Member


Carrier Member


Organization Member

Date: 11-76-82