

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 94

Docket No. NEC-BMWE-SD-2257

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 notified Trackman R. Stinnette that he had forfeited his seniority rights in accordance with Rule 21-A (System File NEC-BMWE-SD-2257).
2. The Carrier will return the Claimant to service with full seniority rights unimpaired and he shall be compensated for all lost time from December 19, 1986 as a result of the violation referred to in Part 1 hereof."

FINDINGS:

Claimant R. Stinnette was employed as a trackman by Carrier. On December 13, 1986, Claimant was notified that Carrier considered Claimant as having resigned from service under Rule 21-A of the agreement, governing absenteeism without permission, because he last had reported for duty on November 20, 1986, and Carrier had received no further communication from Claimant. The Organization thereafter filed a claim on Claimant's behalf, challenging Carrier's application of Rule 21-A.

This Board has reviewed the record in this case, and we find that the Organization has not met its burden of proof that the Carrier acted improperly when it applied the self-invoking provisions of Rule 21-A in this case. Therefore, the claim must be denied.

The record reveals that the Claimant last performed work for the Carrier on November 20, 1986. He did not report for work or contact the Carrier on any day thereafter until after the Carrier notified the Claimant on December 13, 1986, that he was considered resigned under

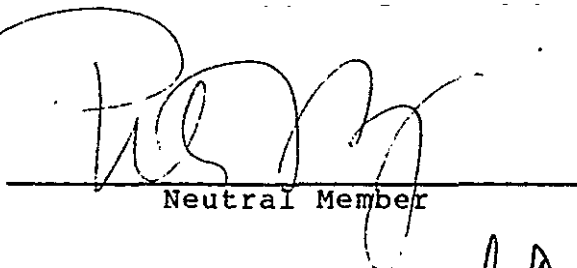
Rule 21-A.

The Claimant has failed to provide sufficient evidence that he contacted the Carrier during those fourteen days or that he was unable to contact the Carrier because of circumstances beyond his control or physical incapacity. Rule 21-A is common throughout the industry and has been found to be reasonable by this Board in numerous recent cases.

The Organization argues that this case is similar to recent Awards 57 and 73 of this Board. However, a review of the facts of those cases demonstrates that, in both situations, the Carrier was clearly aware of the reasons for the Claimant's absence either because the Claimant had previously been on a disability or had been suffering from severe mental problems beyond his control. In the case at hand, although the Claimant argues that he was injured on the job on November 16, 1986, and that was the reason for his absence, the record does not reveal the same Carrier knowledge that was clearly present in Awards 57 and 73. The Claimant had a responsibility of notifying the Carrier of the reasons for his absence, and he did not live up to the requirements of Rule 21-A. Therefore, the claim must be denied.

Award:

Claim denied.



Neutral Member

Carrier Member

Organization MemberDate: 6-14-89