

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK) - NORTHEAST CORRIDOR**

Case No. 203

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

1. The termination of the seniority of Third Rail Electrician E. A. Fedroff for alleged violation of Rule 21-A was harsh, arbitrary, capricious and without just cause (System File NEC-BMWE-SD-3869).
2. The Claimant shall be returned to the Carrier's service with all seniority rights and benefits unimpaired and he shall be compensated for loss of wages suffered from August 11, 1998 until his return to active service.

FINDINGS:

The Organization filed the instant claim on behalf of the Claimant after the Carrier terminated his seniority for violating Rule 21-A when he allegedly absented himself from service for 14 days without notifying his supervisor. The Organization argues that the Claimant approached his supervisor, R. Pratt, on July 15, 1998, and requested a personal leave of absence. Mr. Pratt instructed the Claimant that he could turn in a written request later when the Claimant knew exactly when his leave would begin. The Organization contends that the Claimant began his leave of absence on July 19, 1998, and faxed his written request to the Carrier on August 5, 1998, which stated that his leave would be from July 19 through August 11, 1998.

The Carrier contends that it terminated the Claimant's employment when he absented himself from duty for 14 days without notifying his supervisor. The Carrier contends that it offered reinstatement but without backpay. The Claimant, however, refused the offer.

The parties being unable to resolve the issue at hand, this matter now comes before this Board.

This Board has reviewed the record in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant did not formally file for his leave of absence for more than fourteen days after beginning the leave of absence. The record reveals that the Claimant began his leave of absence on July 19, 1998, but did not formally fax his written request for that leave until August 5, 1998. As a result of that, the Carrier terminated the Claimant for violating Rule 21-A because he was absent without notifying his supervisor.

Further analysis of the record makes it clear that the Claimant had discussed with his supervisor that he would need some time off in order to move his family to Florida. The supervisor was well aware of the fact that the Claimant was going to absent himself for a period of time. The technical mistake in this case was that the Claimant did not properly file for that leave of absence until he had already been absent for fourteen days.

The Carrier charged the Claimant with a Rule 21-A violation because he was away from work for fourteen days without notifying his supervisor. But the facts are clear that

on July 15, 1998, he requested the personal leave of absence and was told by his supervisor that he should file the written request when he knew exactly when his leave would begin.

Once this Board has determined that there is sufficient evidence in the record to support the finding that the Claimant was guilty of a rule violation, we next turn our attention to the type of discipline imposed. In this case, the Carrier terminated the seniority of the Claimant for the technical violation of Rule 21-A. However, it is apparent from the record that the Carrier is taking action against the Claimant based upon his attendance. The Carrier points out that in his eighteen years of service, the Claimant has received numerous disciplinary actions for excessive absenteeism, including two suspensions, several warning letters, and counseling sessions. Although the Carrier did not treat this as an absenteeism case, it is apparent that that is what it is.

This Board finds that the Carrier's action in terminating the Claimant's seniority, given his lengthy seniority and the facts of this situation, was unreasonable, arbitrary, and capricious. The Carrier should have merely given him a lengthy disciplinary suspension for failing to come into work for a number of days without properly filing for the leave of absence.

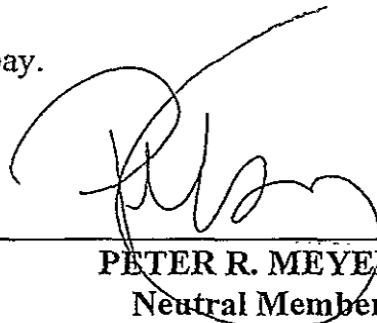
Consequently, this Board is left with an eighteen-year employee who was improperly terminated. However, this employee must understand that it is important that the Carrier knows when he is going to be absent so it can plan for it. In order to impress

that upon him, this Carrier would have been justified in issuing him a lengthy suspension.

Consequently, this Board finds that the Claimant shall be reinstated, but without back pay. The time that the Claimant was off shall be viewed as a lengthy disciplinary suspension for his wrongful failure to provide notification to the Carrier. What took place in this case was not a clear-cut violation of Rule 21-A justifying the termination of the Claimant's seniority. Given his lengthy service with the Carrier, the Claimant should have accepted the Carrier's offer to reinstate him without back pay. Therefore, this Board is doing what should have been done a number of months ago.

AWARD:

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



PETER R. MEYERS
Neutral Member



CARRIER MEMBER

DATED: 9/21/99



ORGANIZATION MEMBER

DATED: 9/21/99