

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NORTHEAST CORRIDOR**

Case No. 303

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

1. The Carrier’s seniority termination of Mr. M. Takitch, issued by letter dated October 25, 2012 was arbitrary, unjust, on the basis of unproven facts and in violation of the effective working agreement. (System File NEC-BMWE-SD-5102).
2. As a consequence of the violation referred to in Part 1 above, Mr. Takitch shall be returned to service immediately and granted all other relief due under the agreement.”

FINDINGS:

By letter dated October 25, 2012, the Claimant was notified that his seniority was being terminated immediately, pursuant to Rule 21-A of the parties’ Agreement, addressing absence without permission and stating that employees who absent themselves from work for fourteen days without notice to supervision shall be considered as having resigned from the Carrier’s service. The Organization thereafter filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to terminate the Claimant’s seniority. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence in the record demonstrates that the Claimant absented himself from service for fourteen consecutive days without notice to his supervisor, because the

Claimant did not furnish evidence of either physical incapacity or circumstances beyond his control that prevented such notification, because the Claimant properly was considered as having resigned under the self-invoking provisions of Rule 21-A, because the Claimant's uncorroborated assertion that he spoke with Foreman Wilson about his absence on October 17, 2012, was disputed by other witnesses, because the Claimant deliberately ignored Wilson's instructions to contact his supervisor, because only the Carrier may grant leniency, and because the forfeiture of the Claimant's seniority was not an abuse of the Carrier's discretion. The Organization contends that the instant claim should be sustained in its entirety because the Claimant attempted to notify at least four different Carrier officials within about two weeks about the incapacitating reason for his absence, because the Claimant successfully reached his immediate supervisor and at least two other officials, because the Claimant did what he needed to do to preserve his seniority and was not absent for fourteen days without notifying his supervisor, and because Rule 21-A was meant to apply to "walk away" employees and not to employees like the Claimant who actively seek to preserve their jobs under exigent circumstances.

The parties being unable to resolve their dispute, this matter came 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 was guilty of violating Carrier Rule 21-A by being absent without permission for fourteen consecutive days without notifying his supervisor. The record reveals that the Claimant absented himself from work for fourteen days beginning on October 11, 2012, and did not notify

supervision of the reasons for that absence. The Claimant did not furnish the Carrier with any documented evidence of any physical incapacity or circumstances that were beyond his control that prevented any notification.

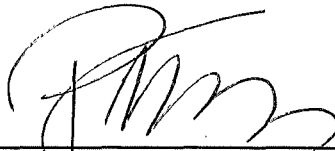
Rule 21-A states the following:

- 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.

The Carrier has proven with sufficient evidence that the Claimant violated Rule 21-A. This Board has no choice other than to consider that the Claimant has resigned from the Carrier's service.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 7/9/14



CARRIER MEMBER

DATED: 7/7/14