

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25267
Docket Number MW-25343

Paul C. Carter, Referee

(Brotherhood of Maintenance of Way Employees
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

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

(1) The dismissal of **Trackman** L. E. Johnson for alleged "Violation of the Absenteeism Agreement between the National Railroad Passenger Corporation (Amtrak) and the employees represented by the Brotherhood of Maintenance of Way in that you were absent without permission or legitimate reason on October 27 and 28 and November 2, 1981" was on the basis of unproven charges and in violation of the Agreement. (System Docket 321D)

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charge leveled against him and he shall be compensated for all **wage** loss suffered.

OPINION OF BOARD: Prior to the occurrence giving rise to the dispute herein, Claimant was employed by **the Carrier** as a Trackman, with service from September 5, 1978. On November 3, 1981, he was notified to attend a trial on November 18, 1981, on the **charge**:

"Violation of the Agreement between the National Railroad Passenger Corporation (AMTRAK) and the employees represented by the Brotherhood of Maintenance of Way in that you were absent without permission or legitimate reason on October 27 and 28 and November 2, 1981."

The trial was postponed until **December 2, 1981**, at which time it was conducted in the absence of Claimant. His Organization Representative **was** present and at the beginning requested a postponement due to Claimant being absent, which request was denied by the Conducting Officer, and the Organization Representative objected to the trial being held in absentia. This Board has rendered numerous Awards upholding discipline of **employees** where the investigation **or** trial was conducted in absentia.

While we may look with askance as to the manner in which the trial was conducted in the present case, with the Conducting Officer presenting all the evidence with respect to Claimant's absence and his prior absentee record, Claimant's Representative, who was present did not object as to the manner in which **the** trial was conducted. It is well settled that if exceptions are to be taken as to the manner in which a trial or investigation is conducted, such exceptions must be taken during the course thereof; otherwise they are deemed waived. While we may consider the trial in the present case far from a text-book example, we must accept the record as made, so far as it is legible.

The Absenteeism Agreement involved herein, dated October 26, 1976, contains the provision:

"3. Maintenance of Way Employees who are found guilty of unauthorized absence from work for the third time within a 12-month period shall be subject to dismissal from service. The 12-month period shall start as of first offense as indicated under Item 1 of this Agreement."

In the trial the Carrier introduced its Exhibit "A" which the Conducting Officer described as "a discipline notice of Larry Johnson in which Larry Johnson was assessed ten work days suspension to be held in abeyance for a period of twelve months". Exhibit "A", as submitted to the Referee, simply is not legible. The Conducting Officer also introduced Carrier's Exhibits "B", "C" and "D", which he described as warning letters of June 11, June 23 and July 14, 1981. Exhibits "B", "C" and "D" are not legible as to the dates involved. Exhibit "E" was described as letter dated October 12, 1981. Exhibit "E" is not legible as to the date of same or the date of absence. It is also interesting to note that Exhibits "B", "C", "D" and "E" each contained the identical language:

"This is your first offense in this calendar year.
This letter is a warning that second and third offenses
will be dealt with according to the terms of the Agreement."

This may lead one to wonder just how serious the Carrier takes such matters, and how many "first offense" cases may arise in a calendar year.

Carrier's Exhibits "G" and "H", apparently copies of some payroll records, simply are not legible.

In Third Division Award No. 22559, this Referee took occasion to state:

"...If parties to disputes before this Board expect their exhibits and other material to be considered by the Board, then such exhibits and material must be submitted in legible form."

It seems appropriate to renew the above caution because of the illegible material listed herein.

The record does contain a legible copy of letter dated October 27, 1981, (Exhibit "F"), wherein the Claimant was advised:

"Your next unauthorized absence will result in a trial at which time you could be disciplined up to dismissal in all capacities from Amtrak."

The letter concerned Claimant's absences without permission on October 22 and 26, 1981.

On the record, and considering Claimant's past absenteeism record, the claim will be denied. We have not passed upon the Carrier's procedural time limit on appeal contention, and do not consider it necessary to do so as we have denied the claim on its merits.

FINDINGS: The Third Division of the Adjustment Board. after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

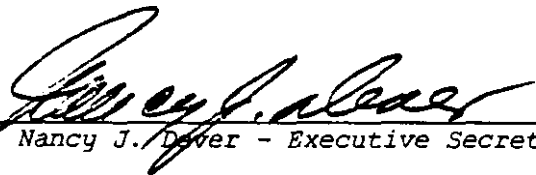
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 28th day of February 1985.