NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25593

THIRD DIVISION Docket Number MW-25814

Paul C. Carter, Referee

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

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

(1) The dismissal of Trackman E. Canada for alleged unauthorized absence on January 4, 7 and 10, 1983 was without just and sufficient cause (System File NEC-BMWE-SD-582D).

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

OPINION OF BOARD: The dispute herein was scheduled for hearing before the Division, with the Referee present. The representatives of the Organization and the Carrier were notified that the hearing was scheduled to begin at 3:00 P.M., June 21, 1985. A representative of the Organization was present at the scheduled time, but Claimant was not; however, the representative of the Organization stated he had understood that the Claimant had received notice of the scheduled time and date of the hearing, and Claimant had advised the Organization that he would be present at the hearing. The hearing was set back to 3:30 P.M., and the Organization representative contacted his headquarters office to ascertain if Claimant had appeared there, which he had not. The hearing then proceeded, beginning at 3:30 P.M., with Claimant represented by the Organization representative.

The record shows that Claimant had about five years of service with the Carrier as a trackman, and at the time of the occurrence giving rise to the dispute herein was assigned as a trackman on Carrier's Philadelphia Division. By letter dated January 19, 1983, Claimant was notified to appear for trial on January 31, 1983, on the charge:

'Unauthorized absences
Specifically on the following dates:
January 4, 7 and 10, 1983 without proper authorization.*

The trial waspostponed and held on February 9, 1983. Claimant was present throughout the trial and was represented by an Organization representative. A transcript of the trial has been made a part of the record. Following the trial, Claimant was dismissed from Carrier's service by notice dated February 17, 1983.

In the trial Claimant admitted to being absent on the dates involved. He also admitted that on January 7, 1983, he was absent and did not call in to report off.

There is in effect between the Organization and the Carrier an Absenteeism Agreement, dated October 26, 1976, which provides in part:

> "1. Maintenance of Way Employees absent from work without permission or legitimate cause shall, on the first offense. be served a written notice advising them that unauthorized absence from work will not be tolerated and could subject them to discipline. A copy of such notice will be forwarded the General Chairman of the area involved.
>
> 'Legitimate cause' is interpreted to man illness of the employee, or a member of his household requiring his personal attention, or attendance in court. In cases where the employee reports off ill, resulting in absence of three (3) or more days, a doctor's certificate of treatment or examination by a Company physician will be required before return to duty is permitted.
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> "2. Maintenance of Way Employees who are found guilty of unauthorized absence from work on the second offense shall be subject to discipline of ten (10) working days suspension.
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> "3. Maintenance of Way Employes 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 the first offense as indicated under Item 1 of this Agreement.'

The Claimant contended he was absent on January 4, 1983, because of illness of his child. The Carrier states this could have been considered a legitimate reason to be off under the Absenteeism Agreement, had the call been made by Claimant before the shift start and proof of the child's illness presented. Claimant stated that he called in about 12:00 noon on January 4, 1983. When asked why he called in so late he responded:

> "A. I took my child to the hospital and then I had trouble with my car and I couldn't get to a phone in time to call.
>
> Q. Did you explain this to whoever you talked to?
>
> A. No."

He admitted that he did not call in on January 7; that on January 10, 1983, he called in about 8:30 A.M., his explanation being that "On that particular day I did not have the phone numbers on hand. When I finally got the number it was 8:30 A.M."

The Carrier contends that it is a requirement that an employe report off prior to the start of his shift in order that his absence may be considered excused if legitimate reason is given at the time, and also in order to make arrangements to replace an employe who is going to be absent, the Carrier must know of the intended absence as far in advance as possible. This issue was considered in Award No. 50 of Public Law Board No. 2406, involving the same parties as here involved, in which Award it was held:

> "A requirement that an employee notify the Carrier of absence before the beginning of his shift is an implicit requirement of the program, and the claimant knew of, or should have known of, this requirement."

See also Award No. 39 of the same Public Law Board.

The record shows that Claimant had received a letter of warning dated December 3, 1982, for being absent on November 6 and 29, 1982, without permission or legitimate reason; that Claimant waived trial for being absent without permission or legitimate cause on December 6 and December 21, 1982, accepting a ten (10) work day suspension to be held in abeyance for one year. His absences without permission or legitimate cause on January 4, 7 and 10, 1983, constituted his third offense within a two-month period. His dismissal was not arbitrary, capricious or in bad faith, but was in accord with the Absenteeism Agreement of October 26, 1976.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, i934;

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

That the Agreement was not violated.