

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26068

Docket Number MW-26195

Peter R. Meyers, Referee

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

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

- Northeast Corridor -

1. The dismissal of Machine Operator V. Watson for alleged violation of 'Amtrak's Policy on Absenteeism' was improper, unwarranted and in violation of the Agreement (System File NEC-BMWE-SD-701D).

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: Claimant was employed by the Carrier as a Machine Operator at Carrier's T.L.S. Undercutter Campsite at Perryville, Maryland; Claimant had over three years of service with Carrier. Claimant was absent from service on July 13, August 2, 5, 8, 9, 10, 22, 24, and 25, 1983. On August 25, 1983, Claimant was notified to attend a trial in connection with these absences and his alleged violation of Carrier's absenteeism policy. After a postponement, the trial was held on September 26, 1983. As a result of the trial, Claimant was notified on October 5, 1983, that he was dismissed from service. The Organization then filed a Claim on Claimant's behalf challenging his dismissal.

This Board has reviewed all of the evidence in this case, and finds that there is sufficient evidence in the record that the Claimant was in violation of Amtrak's Policy on Absenteeism when he was absent from work on July 13, August 2, 5, 8, 9, 10, 22, 23, 24, and 25, 1983. The Claimant admits his absenteeism. Moreover, the Claimant did not offer any evidence of permission to be absent on the dates in question or any legitimate excuses. Hence, the Carrier proved the violation of the Agreement and properly subjected the Claimant to discipline.

Once this Board determines that there is a proven violation subjecting a Claimant to discipline, we next turn our attention to the type of discipline imposed by the Carrier. It is well settled that this Board will not set aside discipline unless the Carrier's action was unreasonable, arbitrary, or capricious. In this case, the October 26, 1976, Absenteeism Agreement between the parties calls for a three-step progressive disciplinary procedure. First-time offenders receive a letter of warning; second-time offenders, in a twelve-month period, receive a ten-day suspension; and third-time offenders are subject to discharge. The Claimant, in the instant case,

received his letter of warning on October 12, 1982, and then he received a ten-day suspension for a second violation on December 2, 1982. This latest incident, then, was the third in twelve months and subjected the Claimant to discharge. He was aware of the consequences of continued violation of the Absenteeism Rules, and he did not reform his behavior. Hence, this Board finds that the Carrier was not unreasonable or arbitrary in its decision to terminate the Claimant.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1986.

