

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26399
Docket Number MW-27187

Edwin H. Be" ", Referee

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

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

1. The dismissal of **Trackman** O. A. Booker, Jr. for alleged 'Excessive Absenteeism' was without just and sufficient cause and in violation of the Agreement (System File NEC-BMWE-SO-12380).

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: By charges dated February 20, 1985, and after Hearing initially scheduled for February 26, 1985, and ultimately held on March 12, 1985, Claimant was dismissed from service by letter dated March 26, 1985, for excessive absenteeism on January 23, February 8, 11, 13, and 15, 1985. Claimant asserts that on January 23, 1985, he was required to attend a court Hearing; on February 8, 1985, he was granted permission to leave work early; and on the remaining days he was absent due to a "abscessed tooth and dental appointments for treatment of that condition.

The Organization's argument that the Hearing was scheduled outside of the 30 day time limit in Rule 71(a) thereby precluding the consideration of those dates more than 30 days prior to the scheduled Hearing date is without merit. Claimant was cited promptly after the last incident. The charge of excessive absenteeism, by its nature, is one that must be developed **over** a period of time. See Second Division Award 10148; Special Board of Adjustment No. 986, Case No. 10.

Similarly, the Absenteeism Agreement of October 26, 1976, does not, as the Organization argues, prohibit the Carrier from charging employees with excessive absenteeism. The Absenteeism Agreement speaks only of unauthorized absences and the type of discipline that the Carrier can impose when a "employee is guilty of that offense. That Agreement does not concern itself with excessive absenteeism and "under its several management rights, the Carrier has the authority to set up and enforce reasonable rules with respect to excessive absenteeism." Special Board of Adjustment No. 986, Case No. 3. Here, in less than four weeks Claimant was absent on five **separate** occasions. Notwithstanding the legitimacy of the absences, the record supports the Carrier's determination that such an absence rate **was** excessive.

Nevertheless, after consideration of the entire record and the **circumstances** presented, we find the penalty of dismissal to be unduly harsh. Therefore, Claimant shall be returned **to** service on a last chance basis with seniority unimpaired, but without compensation for time lost.

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

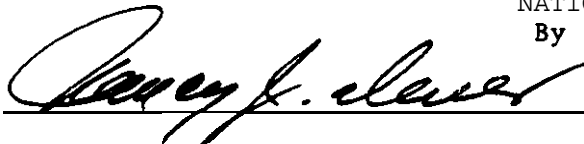
That the discipline "as excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1987.