

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30822
Docket No. CL-31474
95-3-93-3-167

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

(Transportation Communications
(International Union
PARTIES TO DISPUTE: (
(Southeastern Pennsylvania Transit Authority
((SEPTA)

STATEMENT OF CLAIM:

"I. Claim of the System Committee of the TCU (GL-10942)

S-442D	Navrot	S-446D	Thomas
S-443D	McCarthy	S-447D	Williams
S-444D	Moore	S-448D	Creighton
S-445D	Thomas		

that:

- (a) The Authority acted in an arbitrary and capricious manner when it unjustly issued discipline on the above-named towerpersons for patterns of absenteeism.
- (b) All discipline be reversed until such time as the Authority and the Organization determine what a pattern is.
- (c) The Authority's action concerning patterns is illegal since it has not been determine just what is a pattern.

II. Claim of the System Committee of the TCU

S-464D	Karcher	S-466D	Rhym
S-465D	Grabski		

that:

- (a) The Authority violated the present TC-Division Agreement effective April 28, 1983, with Memorandums of Agreement dated December 8, 1987 and January 23, 1990, particularly Appendix A, the Employee Availability Plan,

Attendance Point System, when it unjustly issued discipline on the above named towerpersons in the form of pattern points assessed for establishing a so-called pattern.

- (b) Points assessed now be reduced to a total which does not reflect the assessment of points due to the establishment of a pattern.
- (c) In accordance with the present Agreement, the parties have agreed to meet to determine what a pattern is. As of this date, final settlement in this matter has not been reached.

III. Claim of the System Committee of the TCU S-457 that:

- (a) The Authority violated the present Clerical Agreement effective April 28, 1983, with Memorandum of Agreement dated December 8, 1987 and January 23, 1990, particularly Appendix A Part IV(d) of the Employee Availability Plan, Attendance Point System when on June 25, 1991, it unjustly issued points to Passenger Receipts Clerk D. Crockett as the result of a so-called pattern.
- (b) Ms. Crockett's point total now be reduced to a total of two points until the Authority and the Organization reach a final agreement on what constitutes a pattern.
- (c) In accordance with the present Agreement, the parties have agreed to meet to determine what a pattern is. As of this date, final settlement in this matter has not been reached."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This dispute concerns the relationship between Sections II and IV of Appendix A, the Attendance Point System, of the parties' Agreement.

Section II provides:

"Each sick turn-in will be assessed two (2) points.

At least three (3) similar types of turn-ins in one (1) year will establish a recognizable pattern. The turn-in that establishes the pattern will be assessed an additional four (4) points. Each subsequent sick turn-in that fits into this pattern, and still has three (3) prior sick turn-ins in that year in the same pattern, will be assessed an additional two (2) points. These points for additional pattern sickness will also be added to the penalty assessed for misses with sick turn-ins."

Section IV provides, in relevant part:

"(c) The parties recognize that the foregoing Point System will be implemented as soon as practicable after the execution of the Labor Agreement.

(d) The parties agree to meet for purposes of reaching final agreement on what constitutes a "pattern" under II above. Absences identified by a physician as related to premenstrual syndrome, however, will not be considered for purposes of establishing a pattern."

The Organization argues that Carrier acted improperly in assessing pattern points against all of the Claimants prior to the parties having reached final agreement in accordance with Section IV(d). Carrier contends that this matter is not properly before this Board, but instead should have been submitted to an established System Board of Adjustment. Carrier further argues that final agreement concerning pattern sickness absences was reached on August 5, 1991, effective August 11, 1991. Because the

absences which are the subject of the instant dispute occurred prior to August 11, 1991, they were subject to Section II. Consequently, in Carrier's view, the pattern points were properly imposed.

The Board has thoroughly reviewed the record developed on the property. Although the parties typically submit their claims to SBA 979, the existence of that Board does not oust this Board of jurisdiction for claims not scheduled before that Board.

Turning to the merits, we find that the parties did agree to meet for purposes of reaching final agreement concerning pattern sickness absences. However, the Agreement did not provide that pattern points could not be assessed pending the outcome of those discussions. On the contrary, the Agreement specified, in Section II, how pattern points were to be assessed and provided in Section IV(c) that the point system would be implemented as soon as practicable. Thus, under Section IV(c), the pattern point system specified in Section II took effect until such time as it might be modified in accordance with Section IV(d).

The pattern points in the claims before this Board were all assessed prior to the agreement reached under Section IV(c). They were assessed in accordance with Section II. Therefore, the assessment of those points did not violate the Agreement.

AWARD

Claims denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 27th day of April 1995.