

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35501
Docket No. TD-34500
01-3-98-3-147**

The Third Division consisted of the regular members and in addition Referee Donald W. Cohen when award was rendered.

**(American Train Dispatchers Department/
(International Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)**

STATEMENT OF CLAIM:

“Please accept this appeal from decision of Hearing Officer R. A. Hen, finding that absences of Train Dispatcher R. P. Arrighi constituted Excessive and Pattern absenteeism, as specified in Notice of Investigation dated January 27, 1997, and from the assessment of seven (7) days suspension by New England Division General Manager W. B. Duggan in connection with this alleged offense. This appeal is filed in accordance with RULE 19 DISCIPLINE - INVESTIGATION - APPEAL (c) of our Agreement.

It is ATDD - BLE’s position that, because of a defective charge and because NRPC/Amtrak failed to sustain the (defective) charge, Train Dispatcher R. P. Arrighi was improperly found in violation of an (undemonstrated) absenteeism policy and assessed discipline therefor. We demand that this finding be overturned, that the discipline be removed, that Mr. Arrighi’s record be cleared of any reference to this matter, that any charges related to this matter be dropped, and that Mr. Arrighi be compensated for time lost off his position to attend this investigation.”

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 were given due notice of hearing thereon.

On December 29, 1996, the Claimant received a warning letter indicating that for the year 1996 he was off sick 23 days plus one personal day. The warning indicated that such absenteeism was unacceptable and also stated that most of the days he was **off** were either the day before or the day after his relief dates. The warning concluded "unless there is an improvement in your attendance record, it may be necessary to take official action." Thereafter, the Claimant was off sick on January 9 and January 16, 1997, both days being in conjunction with his relief dates.

The Organization contends that the Carrier has no attendance policy and that there is no demonstrated Rule which the Claimant was guilty of breaking. The Organization also raises an issue regarding the fact that the Hearing Officer made his own Investigation regarding a defense raised by the Claimant that he became constipated, and had to take laxatives. This consisted of the Hearing Officer going to a drugstore to check alternative medication. The Organization also alleged that employees with a worse absentee record than the Claimant were not disciplined.

The Carrier defends its action by claiming that the Claimant had been advised that his pattern absences would result in formal action. The Carrier points out that the Claimant did not refute the charges in the December 29 letter and that his testimony in the Hearing reflected the wrong attitude toward his job attendance. The Carrier also claimed that other employees either had extended absences or did not continue violations after being warned.

The Organization is correct in its contention that the Carrier does not have a demonstrated attendance policy. This does not mean, however, that the Carrier is powerless to assess disciplinary action when an employee has been warned regarding excessive absenteeism and specifically in this case pattern absenteeism. The Claimant was put on notice that he had exhibited conduct that would be cause for disciplinary

action should it continue. Within one week after receiving the written warning the Claimant took time off in conjunction with a relief day. The following week he did the same thing. The Organization did not make a record which would support a finding that the Claimant was treated in a different manner than other employees and there is nothing to indicate disparate treatment.

The Organization did not challenge the December 29, 1996 warning, nor did the Claimant until or about February 2, 1997. As a consequence the Claimant cannot claim a lack of awareness that his attendance and method of attendance were unacceptable. The Claimant demonstrated an unusual lack of interest in his job, advancing simplistic and unconvincing reasons for his absence, during the course of the proceeding before the Hearing Officer. One of the reasons advanced by the Claimant was a problem with constipation. The Hearing Officer took it upon himself to investigate various constipation remedies. Neither the defense raised by the Claimant, nor the Investigation undertaken by the Hearing Officer, is significant to these proceedings and while it was ill advised for the Hearing Officer to do what he did, his action does not rise to a level wherein it would be appropriate to set aside his findings. The Carrier was justified in assessing the seven-day suspension.

AWARD

Claim denied.

ORDER

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 21st day of June, 2001.