

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37627
Docket No. SG-38297
05-3-04-3-214

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood of Railroad Signalmen
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Railroad Passenger Corp.:

Claim on behalf of J. D. Meehan, for reinstatement to his former position, pay for all lost time, preserve all of his seniority rights and benefits, and remove all mention of this matter from his personal record, account Carrier violated the current Signalman's Agreement, particularly Rule 57, when it failed to provide a fair and impartial investigation evident when Carrier issued the harsh and excessive discipline of dismissal against the Claimant without proving its charges in connection with an investigation held on March 12, 2003. Carrier's File No. NEC-BRS(N)-SD-1011D. General Chairman's File No. None. BRS File Case No. 12805-NRPC(N).”

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.

The Claimant was a ten year service employee at the time of his dismissal in March 2003 for a violation of Amtrak's Standards of Excellence and its National System Attendance Policy. An Investigation on charges that he was absent from duty on November 27, 29, December 14, 16 and 18, 2002 was held on March 12, 2003, at which time the Claimant was found guilty of excessive absenteeism and dismissed from service.

The transcript of the Investigation reveals that the Claimant left early on November 27, 2002 when he called into Red Block in the presence of his Foreman and checked himself into an inpatient detoxification program, where he remained until his release on November 30, 2002. The Claimant's immediate supervisors did not receive communication from Red Block or the EAP that the Claimant had gone into the Red Block Program, and it appears that the notification procedure is not always followed. Prior to Saturday, December 14, 2002 the Claimant had agreed to work overtime, but failed to show up claiming that he was unaware that he was required to or that such time could be used as an absence against him. The Claimant had car problems on December 16, 2002 which he told his supervisor about when he arrived at work one and one-half hours late. His December 18, 2002 absence was the result of an arrest leading to time in jail.

The record also contains a plea from the Claimant for his job back, indicating that he has been in treatment, loves and needs his job to support his family, and would do anything it took to prove himself to the Carrier. A letter from a substance abuse counselor indicates that the Claimant has been in weekly counseling since January 2003, attends daily AA meetings and exhibits an exemplary attitude and behavior.

The Organization argues that the Carrier failed to prove that the Claimant violated the Attendance Policy because his November absences should not have been considered as they were attributable to the Red Block Program, which is a stated exception in the Attendance Policy for adverse use as an occurrence when counting whether an employee has accumulated three occurrences within a 30-day period, five within a 90-day period or 11 within a 12 month period. It asserts that the lack of proper notification to his supervisor from Red Block is not the Claimant's fault and should not result in an unexcused absence. The Organization contends that the

Carrier failed to prove the December 14, 2002 absence leaving only two occurrences within a 30-day period. It requests that the excessively harsh discipline be set aside and that the Claimant be returned to work, citing Second Division Awards 10268 and 11597, as well as Third Division Award 16800.

The Carrier argues that the reasons for the Claimant's absences are not relevant when it comes to application of the Attendance Policy, indicating that there is substantial evidence in the record of the Investigation to prove that the Claimant was absent on all five cited dates within the 30-day period, thereby violating the policy. The Carrier notes that the Claimant had received progressive discipline for prior attendance issues, and was aware of the policy, which includes absences for scheduled overtime days. It asserts that the discipline assessed is within its prerogative, has not been shown to be unreasonable or arbitrary, and should not be interfered with by the Board, citing Special Board of Adjustment No. 986, Awards 91 and 138.

A careful review of the record convinces the Board that although the Claimant was shown to be absent on the dates cited, no consideration was given by the Carrier to the fact that two of his absences related to his entry into the Red Book Program, which are excluded from consideration when determining excessive absenteeism, and at least one other was a direct result of admitted substance abuse issues. While the record indicates Claimant's contact with RedBlock to be in question, efforts could have been made, through contact with RedBlock officials, to verify the facts. The Claimant took responsibility for his actions, indicating that he understood that his substance abuse was a disease which he had to deal with in order to be a productive employee and family member. Because the record reflects that the Claimant has taken positive steps to get his substance abuse under control, and has offered to meet any conditions imposed by the Carrier in order to prove that he can remain drug free during his employment, the Board concludes that, under the specific circumstances of this case, the imposition of the dismissal penalty was excessive and that the Claimant should be given one final opportunity to demonstrate that he can be a valuable employee. Accordingly, the Claimant shall be returned to service with seniority unimpaired, but without backpay or other benefits, and under terms which include his agreement to continue to address his substance abuse issues through EAP. See Second Division Award 10268.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 19th day of October 2005.