

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24653  
Docket Number MW-24763

Tedford E. Schoonover, Referee

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

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

(1) The dismissal of B&B Welder J. T. Bond for alleged unauthorized absenteeism on December 17, 19, 29, 30, 31, 1980 and January 5, 12 and 13, 1981 was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-239D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: On January 13, 1981 Claimant was notified to attend hearing on the following charges:

Violation of Amtrak - BMWE Absenteeism Agreement -  
unauthorized absenteeism on the following dates:

- (8) eight hours - December 29, 1980
- (8) hours - January 12, 1981
- (6) six hours - December 17, 1980
- (4) four hours - December 19, 1980
- (3) three hours - December 30, 1980
- (2 1/2) two and one-half - December 31, 1980
- (3) three hours - January 5, 1981
- (1) one hour - January 13, 1981

The hearing was held on January 20, as scheduled but was continued at the request of the Brotherhood representative until January 27, at which time it was completed. During both sessions of the hearing Claimant and also his representative participated in questioning of witnesses. Both protested that Claimant's prior discipline record was entered into the record. Their objections were noted.

Disciplinary action of dismissal was issued by the Carrier on February 11, 1981. Claimant filed an appeal from the dismissal action on February 27, 1981 to which Carrier objects account such appeal not being within 15 days provided by Rule 74. Nevertheless, Carrier proceeded to consider the appeal in the usual way. In view of Carrier proceeding to consider the appeal on the property, thus complying with rules and procedures for referral of the dispute to this Board, we will not now give cognizance to the argument that the time limit provision was violated.

The Brotherhood also raised objection to the discipline on the grounds that two of the dates, i.e., December 17 and December 19, were not within the 15 days of the alleged offense as provided in Rule 71(a). This point was raised during the hearing. At the same time the Brotherhood notified the hearing officer that an appeal would be filed in the event any disciplinary action was taken.

A thorough review of the hearing transcript does not support the position that Claimant did not receive a fair and impartial hearing.

Despite the controversy between the parties and their respective positions respecting time limit violations, the evidence is clear and conclusive that Claimant failed to obtain permission or comply with established procedures for absence from duty. The Claimant was indifferent to obtaining proper permission when he chose to absent himself from work. The BMW-AMTRAK Absenteeism Agreement provides:

- "1. Maintenance of Way Employees absent from work without permission or legitimate cause shall, on the first offense, be served a written notice advising them that unauthorized absences from work will not be tolerated and could subject them to discipline. A copy of such notice will be furnished the General Chairman of the area involved.

'Legitimate cause' is interpreted to mean illness of the employee, or of a member of his household requiring his personal attention; or attendance in court. In cases where the employee reports off ill, resulting in absence of three (3) or more days, a doctor's certificate of treatment or examination by a Company physician will be required before return to duty is permitted.

2. Maintenance of Way Employees who are found guilty of unauthorized absence from work on the second offense shall be subject to discipline of ten (10) working days' suspension.
3. Maintenance of Way Employees who are found guilty of unauthorized absence from work for the third time within a 12-month period shall be subject to dismissal from service. The 12-month period shall start as of first offense as indicated under Item 1 of this Agreement."

The record shows Claimant had been previously disciplined on three separate occasions during 1980 for unauthorized absences from work including one instance in which he was suspended from duty for a period of ten days. In view of the evidence in support of the charges in the instant case, provisions of the Absenteeism Agreement and Claimant's prior disciplinary record we find the disciplinary action to be just, reasonable and merited in the circumstances.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 - Executive Secretary

Dated at Chicago, Illinois this 30th day of January, 1984