

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25591
Docket Number MW-25751

Paul C. Carter, Referee

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

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

"(1) The dismissal of Repairman T. F. Smith for alleged violation of Rule 'K' was without just and reasonable cause (System Docket 465D).

(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: Claimant had about five years of service with the Carrier as a trackman, and, at the time of dismissal, was assigned as Maintenance of Way (MW) Repairman with gang B-112, on Carrier's Baltimore Division. On June 21, 1982, he was notified by Carrier's Equipment Engineer to report for trial beginning at 9:00 A.M., July 1, 1982, on the charge:.

"VIOLATION OF AMTRAK RULES OF CONDUCT, RULE 'K' which reads: Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor.

SPECIFICATION: In that you have been absent from duty from March 29, 1982, until June 21, 1982."

The trial was conducted as scheduled, with Claimant present and represented. A transcript of the trial has been made a part of the record. Following the trial, Claimant was notified on July 12, 1982, of his dismissal from service.

The Board has carefully reviewed the transcript of the trial. There was substantial evidence in support of the charge. The record also indicates that Claimant was previously cautioned about his absences in January, February and March, 1982.

The contention is made that all of Claimant's absences were due to illness. We agree that bona fide illness is a proper excuse for being absent. However, the Carrier is entitled to notice of any absence, and Claimant was clearly negligent in this respect.

From our review of the entire record in the dispute, we have concluded that Claimant should be given one last chance to return to Carrier's service, with his former seniority, provided that he can satisfactorily pass such physical examination that may be required by the Carrier, but without any compensation for time lost while out of service. Claimant should understand, however, that the purpose of this award is to give him one last chance to become a reliable and dependable employee; that it is expected that his work attendance record will improve, and if necessary for him to be absent for a valid reason, such absence must be handled strictly in accordance with the rules involved.

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 was excessive.

AWARD

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 22nd day of August 1985.

