

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26130
Docket Number MW-26242

Peter R. Meyers, Referee

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

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

(1) The dismissal of Trackman E. M. Legette for alleged 'Violation of Amtrak's General Rules "K" ... in that you failed to report to work on March 23, 1983, March 24, 1983, March 27, 1983, March 28, 1983, and March 30, 1983' was unwarranted and without just and sufficient cause (System Docket 711D).

(2) The dismissal of Trackman E. M. Legette for alleged 'Violation of NRPC, Amtrak General Rules of Conduct, Rule "K" ... in that you failed to report to work on July 12, 15, 18, 21, 22, and 25, 1983' was unreasonable and unwarranted (System Docket 712D).

(3) The claimant's personal record shall be cleared of the charges leveled against him, he shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant was employed as a Trackman by the Carrier with a seniority date of August, 1975. Claimant was instructed to appear at a Hearing in connection with alleged violations of Carrier's General Rule K, in that Claimant allegedly failed to report for work on March 23, 24, 27, 28, and 30, 1983. General Rule K states, "Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instructions from their supervisor." After a postponement, a Hearing was held on September 7, 1983. As a result of the Hearing, Claimant was dismissed from employment. The Organization thereafter filed a Claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case, and it finds that there is sufficient evidence to support the finding that the Claimant was guilty of failing to report to work on five days in March, 1983. Although the Claimant argues that he was in jail on March 23 and 24, 1983, it is fundamental that being held in jail is not a valid reason for an employee's failure to protect his assignment. See Third Division Award 24353 and Second Division Award 9554. Moreover, although Claimant states that he was absent on March 27 and 28 because his mother was in the hospital, Claimant did not produce any documentation supporting that contention. It is fundamental that if an employee is absent from work, he must support his reasons with competent and acceptable evidence. See Second Division Award 6710.

Hence, this Board finds that there is sufficient evidence to support the Carrier's finding that Claimant was guilty of failure to protect his assignment. Once this Board determines that there is substantial evidence to support the finding of guilty, we next turn our attention to the discipline imposed by the Carrier. It is fundamental that this Board will not second-guess the Carrier and set aside discipline unless the action taken by the Carrier was unreasonable, arbitrary, or capricious. In this case, we find nothing to indicate that the action taken by the Carrier in dismissing the Claimant for his Rule violations was unreasonable, arbitrary, or capricious. Consequently, the Claim must be denied.

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 19th day of September 1986.