

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26585
Docket Number MW-26902

Edwin H. Benn, Referee

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

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

1. The dismissal of M&W Electrician Helper G. J. Gruber for alleged 'Violation of Amtrak-BMWE Absenteeism Agreement' on January 25, 28 and 29, 1985 was without just and sufficient cause and in violation of the Agreement (System File NEC-BMWE-SD-1209D).

2. The claimant shall be reinstated with seniority and all other rights unimpaired, the charges leveled against him shall be removed from his record and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, a M&W Electrician Helper, held a seniority date of June 13, 1977, and worked at the Baltimore M&W Shop, Penn Station, Baltimore, Maryland. By letter dated February 5, 1985, Claimant was charged with being absent without proper authorization. After Hearing held on February 19, 1985, and by letter dated March 4, 1985, Claimant was dismissed from service.

Claimant was absent from work on January 25, 28 and 29, 1985. According to the Foreman, on January 25, 1985, Claimant called in after his shift began and stated that he overslept and would be in late. However, Claimant did not report on that date. According to Claimant, on January 25, he called in sick. Claimant testified that on January 28 and 29, he called in and stated merely that he would not be in.

Procedurally, the Organization contests the fairness of the Hearing in that the decision was rendered by someone other than the Hearing Officer. Putting aside the issue of whether such an argument was timely raised, we find that contention lacking in merit. Nothing in the Agreement has been pointed to prohibiting the procedure utilized by the Carrier. Further, we note that the material facts concerning the absences are basically undisputed and do not require credibility determinations by someone other than the Hearing Officer. See Third Division Awards 24590, 21017, 17091, 9819.

With respect to the merits, the Organization argues that discipline was not appropriate under the terms of the October 26, 1976 Memorandum of Agreement governing absenteeism since Claimant's absences on the dates at issue were legitimate due to personal illness. Although dispute exists con-

cerning the legitimacy of the absences, we note that the charge against Claimant concerns Claimant's unauthorized absences, which is the specific conduct regulated by the Memorandum of Agreement. We are satisfied that the record demonstrates by substantial evidence that Claimant's absences were not authorized. Claimant's informing the Carrier that he was sick or would not be in does not equate to receiving authorization for the absences. See Second Division Award 7062.

The Memorandum of Agreement provides at Paragraph 3 that dismissal is appropriate for the third offense within a 12 month period. Claimant's record shows a May 10, 1984, warning letter for excessive absences during February through May, 1984, and a 10 day suspension dated December 6, 1984, for absences without proper authorization on October 5 and 24, 1984. This was Claimant's third offense within the 12 month period thereby permitting dismissal. We therefore find no valid reason to disturb that disciplinary action.

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 Employes involved in this dispute are respectively Carrier and Employes 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

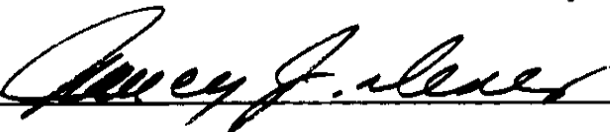
That the Agreement was not violated.

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 27th day of October 1987.