

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

STATEMENT OF CLAIM: "Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the National Rail Passenger Corporation (AMTRAK):

On behalf of T. Richburg for restoration of 10 day's pay account of being suspended for alleged violation of Rule 'K' and unauthorized absence and tardiness on May 6, 7, 8, 9, 10 and 13, 1985. Carrier file NEC-BRS-SD-226-D."

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 employees 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 waived right of appearance at hearing thereon.

Claimant entered Carrier's service on June 20, 1977, and at the time of this disciplinary action was a Signalman in the Communication and Signal Department on the Baltimore Division.

By notice dated May 14, 1985, Claimant was advised to attend a trial on June 6, 1985, in connection with the following charge:

"Violation of the N.R.P.C., General Rule K, which 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.' Specifically, you are charged with unauthorized absence and tardiness on the following dates: May 6, 7, 8, 9, 10, 13, 1985."

The trial was postponed and rescheduled for June 25, 1985. Following the trial, by notice dated June 28, 1985, Claimant was assessed a suspension of ten (10) days.

The Organization's position is that the 10 day suspension was harsh and unusual discipline and not consistent with disciplinary action taken against other C&S employees who have been absent on two days and tardy on four others. Further, Claimant presented evidence at the trial that he was summoned to appear in traffic court on May 7, 1985, and he was off sick on May 10, 1985.

The Carrier asserts that the evidence adduced at the trial proves Claimant was guilty as charged, and that the discipline assessed was commensurate and fully warranted.

The Board finds that the evidence adduced at the trial establishes Claimant's guilt. The April 19, 1985 court summons for May 7, 1985, which Claimant presented at the trial and his unsubstantiated contention made at the trial that he was ill on May 10, 1985, do not alter the fact that he was absent on those dates without authorization. Claimant admitted that he did not notify the Carrier that he would be absent and admitted he was tardy on the dates so charged.

The Board also finds that the degree of discipline assessed by the Carrier was proper. Carrier need not tolerate Claimant's poor attendance habits. His prior record reveals he was counseled by his Supervisor as recently as May 1, 1985 concerning four (4) absences and one (1) incident of tardiness during April, 1985. On two (2) of the four (4) days of absence for which he was counseled on May 1, he had failed to notify the Carrier of his intention to be absent. In addition, his record includes an October 12, 1982 counseling session for failure to obey test instructions and tardiness, among other serious but unrelated disciplinary entries.

As stated in Second Division Award 5049:

"Nothing in the agreement obligates the Carrier to attempt to operate its railroad with employees repeatedly unable or unwilling to work the regular and ordinarily accepted shifts, whatever reason or excuse exists for each absence."

Also see Third Division Award 25316 which states:

"The Board finds that the Transcript of the investigation provides sufficient evidence of probative value, including Claimant's own testimony, to support Carrier's findings of guilt. Prior Awards clearly establish that this Board, in its appellate function, is not a trier of facts (see Third Division Awards 9230, 9322, 10113, 21612). Substantial evidence has been defined as 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion' (Consol. Ed. vs. Labor Bd. 305 U.S. 197, 229). A review of the record in this case firmly establishes that the Carrier has met the requirements of this Rule.

The only issue therefore, is whether the discipline assessed was reasonable. It has long been held by this Board that the employment relationship mandates that an employee regularly fulfill his job assignment. Even further, that employees have an unfailing responsibility to notify their Supervisors of any absence and in fact, to protect their assignment. Absenteeism has a major and detrimental effect on the Carrier and is a serious concern. Although the Claimant alleged mitigating circumstances for his admitted absence, it has long been held that this Board does not substitute its judgment for Carriers where the penalty is not arbitrary, capricious or unreasonable. This Board holds that Carrier action in the instant case complies with accepted Standards and therefore denies the claim."


On the record in this case, it must be concluded that Claimant stands guilty as charged and that the progressive discipline assessed was warranted and proper.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.