

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Appeal of ten (10) days suspension assessed Assistant Chief Train Dispatcher E. W. Simkunas July 22, 1987 - Carrier file NEC-ATDA-SD-69D"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 is employed by Carrier on the New York Division as an Assistant Chief Train Dispatcher. On May 28, 1987, he was charged as follows:

"You failed to be available on May 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 1987 while assigned as Assistant Chief Train Dispatcher at '40' Office, Penn Station, New York, which in light of your previous attendance record constitutes excessive absenteeism."

An investigation into the charges was held on July 14, 1987. As a result of that investigation, Claimant was found guilty as charged and assessed a ten (10) day suspension. A copy of the transcript of that investigation has been made a part of the record. A review of that record reveals that Claimant was afforded all procedural and substantive rights guaranteed by Agreement, that the investigation was handled fairly, and that Claimant was guilty as charged.

The Board, however, is compelled to take issue with Carrier on the procedures it followed in this case in assessing discipline. The record reveals that Claimant had a poor attendance record for the two years previous to the date of the charge. It does not, however, contain any evidence that Claimant was cautioned about time off or that he was disciplined in any manner for it. The record also reveals that the days listed in the charges were days for which Claimant had marked off on account of a knee and back injury. When it is considered that Claimant had never been disciplined for absenteeism and that the time off for which he was charged resulted from an injury, it becomes arbitrary and capricious to level a ten (10) day suspension based on those facts. This Board, therefore, will reduce the ten (10) day suspension to a written reprimand.

The Board, however, is compelled to state that it does not condone absenteeism and that the Carrier has a right to expect regular attendance from all of its employees. It need not keep employees on its rolls who do not come to work on time on a regular basis, regardless of the cause. Claimant in this instance should be aware that he has been officially warned about his poor attendance, and that if he continues to mark off on an excessive basis, his employment with Carrier could be terminated. This Board will not look kindly on any future cases involving this Claimant where excessive absenteeism is involved.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.