Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 37625
Docket No. SG-37971
05-3-03-3-393

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

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 Amtrak (NRPC):

Claim on behalf of D. W. Williams, for a hearing to be rescheduled and the discipline to be expunged from his record and that he be compensated for all time lost, account Carrier violated the current Signalman's Agreement, particularly Rule 57, when it denied the Claimant a fair and impartial trial when it conducted the trial on April 30, 2002 in his absence, denying him the opportunity to defend himself. Carrier's File No. NEC-BRS(S)-SD-962D. General Chairman's File No. 02-135. BRS File Case No. 12559-NRPC(N)."

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 employee 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 were given due notice of hearing thereon.

The Claimant, a Signal Maintainer, was sent a Notice of Investigation on March 25, 2002 concerning charges of violating Amtrak's Standards of Excellence with reference to his continuous absence from work between February 27 and March 25, 2002. The initial Investigation date of April 2, 2002 was postponed by mutual agreement at the Organization's request. By letter dated April 4, 2002 the Claimant advised that he would be unable to attend a Hearing until the end of July or beginning of August due to his incarceration for motor vehicle issues. Another Notice of Investigation dated April 19, 2002 was sent adding the Claimant's absence between March 26 and April 19, 2002. The parties agreed to consolidate these cases for Investigation, and on April 30, 2002 a Hearing was held in absentia, over the Organization's objection. The Claimant was found guilty of the charge of excessive absenteeism and a violation of the Attendance Policy and dismissed from service on May 13, 2002, resulting in the initiation of this claim.

The Organization argues that the Claimant was denied his right to a fair Hearing and the ability to defend himself when the Carrier proceeded with the Investigation in his absence. It asserts that he was unable to attend the Hearing, or work, due to circumstances beyond his control. The Organization contends that the Carrier knew in February that the Claimant may be going to jail for DWI, denied his request for an extended Leave of Absence (LOA) on February 14, 2002, and then failed to act timely in bringing forth these charges and scheduling a Hearing, requiring that the discipline be overturned, citing Third Division Awards 22748 and 18354. It also asserts that the Hearing Officer acted unfairly in going forward with the Hearing despite the Organization's request for a postponement until the Claimant could be there, necessitating that the resultant discipline be overturned, relying on Third Division Award 22681.

The Carrier argues that the thrust of the Organization's appeal is that it conducted the Hearing despite the Claimant's absence. It notes that the Claimant was properly notified of the charges and the Hearing dates, advised he was unable to attend due to his incarceration, and that his duly accredited representative was present and acted on his behalf. The Carrier submits that the Claimant's incarceration does not constitute a valid reason either for postponing the Hearing, or for his proven lengthy absence, upon which the dismissal is based, citing Second

Division Awards 6606 and 4689. The Carrier asserts that, even had the Claimant been present, he admittedly could not contest the fact of his absences or that they were unauthorized, both of which were proven by substantial evidence and documentation during the Investigation. The Carrier requests that the dismissal be upheld, pointing to the fact that the Claimant's absences were not beyond his control but were the result of his illegal actions, he had received progressive discipline for excessive absenteeism over the prior ten year period, and had signed a Rule G waiver in the past which the nature of his DWI reveals the Claimant obviously was not complying with.

A careful review of the record convinces the Board that the Carrier has proven by substantial evidence that the Claimant was guilty of unauthorized excessive absenteeism, and that based upon the Attendance Policy and the Claimant's prior record of discipline under it, the dismissal penalty was neither unreasonable nor arbitrary. The Organization was unable to show that conducting the Investigation in absentia, under the circumstances of this case, was in any way prejudicial to the Claimant, because the documents concerning his absences and denial of his leave could not be disputed. The Board has long held that incarceration does not provide justification for absence from work. See Second Division Award 6606. Neither does it provide a valid reason for a lengthy postponement of the Hearing in this case. Finally, the Board finds no merit to the Organization's contention that the Carrier violated the contractual time limits in bringing forward these charges, because a statement in February by the Claimant that he may be going to jail for DWI without more is an insufficient basis upon which the Carrier could initiate excessive absenteeism charges. For all of these reasons, the claim must be denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 19th day of October 2005.