

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 42456  
Docket No. MS-42597  
16-3-NRAB-00003-140319**

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

**PARTIES TO DISPUTE:** (Guy D. Williams  
(National Railroad Passenger Corporation (Amtrak))

**STATEMENT OF CLAIM:**

“This is to serve notice, as required by the rules of the National Railroad Adjustment Board of my, Guy D. Williams, intention to file an Ex Parte Submission within thirty (30) days covering an unadjusted dispute between me and Amtrak, involving the following questions:

- Unjustifiable termination of employment
- Inconsistent Application of the expungement policy
- Improper approval of FMLA

\* \* \*

I am seeking clarity on how the aforementioned actions constitute an excessive pattern of abuse of the Company’s attendance policy.”

**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.

By notice dated January 11, 2013, the Petitioner was directed to attend a formal hearing on charges that the Petitioner allegedly violated Carrier Rules by being excessively absent during July, August, and September 2012. The Investigation was conducted, as scheduled, on January 18, 2013. By letter dated January 24, 2013, the Petitioner was notified that as a result of the Hearing, he had been found guilty as charged and was being dismissed from the Carrier's service. The Transportation Communications Union/ IAM thereafter filed a claim on the Petitioner's behalf, challenging the Carrier's decision to discipline him. The Carrier denied the claim. The Petitioner subsequently pursued this claim before this Third Division.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence conclusively establishes that the Petitioner is guilty as charged, because the Carrier's no-fault Attendance Policy is fair and reasonable, because the Petitioner's submission improperly raises materials and arguments not raised on the property, because the Carrier's proposal that the Petitioner resign was not improper, because the Petitioner's FMLA application does not shield his past misconduct, and because the discipline assessed was appropriate under all of the relevant circumstances. The Petitioner contends that the instant claim should be sustained in its entirety because all verbal and written counseling in the Petitioner's record between March 22, 2004 and December 11, 2009, are either invalid or should have been expunged pursuant to Carrier policy; because the Carrier incorrectly asserted that the Petitioner received a thirty-day suspension and final warning for attendance issues when the Petitioner did not serve that suspension time, and the days were placed in abeyance for six months and never were activated; because the Petitioner was granted FMLA leave in connection with his son's birth in February 2012; and because the Petitioner was held accountable for fifty minutes on July 14, 2012, when his fiancé was unexpectedly admitted into the hospital.

The parties being unable to resolve their dispute, this matter came before this Board.

The Board reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record that the Petitioner was guilty of violating the Carrier's absenteeism policy when he was absent or arrived late on six occasions within a ninety-day period from July 2, 2012, until September 22, 2012. According to the Carrier's excessive absenteeism rules, if an employee is absent or late more

than five times in a 90-day period, he subjects himself to discipline. The Petitioner was clearly and admittedly guilty of the rule violation.

Once the Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

There is no question that the Petitioner was deserving of discipline in this case. In view of the particular facts and circumstances of this case, this Board orders that the Petitioner be afforded a last chance to improve his attendance. Consequently, this Board finds that the claim must be sustained in part and denied in part. The Petitioner shall be reinstated to service, but without back pay. The period of time that the Petitioner was off work shall be considered a lengthy disciplinary suspension. The Carrier acted unreasonably and arbitrarily when it terminated the Petitioner's employment.

**AWARD**

Claim sustained in accordance with the Findings.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Petitioner(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 31st day of October 2016.