

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 43601
Docket No. MW-44421
19-3-NRAB-00003-170542**

The Third Division consisted of the regular members and in addition Referee Michael Capone when award was rendered.

**(Brotherhood of Maintenance of Way Employees Division -
IBT Rail Conference**

PARTIES TO DISPUTE:

**(
(National Railroad Passenger Corporation (AMTRAK)**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. W. McNeff by letter dated December 7, 2016 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier’s File NEC-BMWE-SD-5477D AMT).**
- (2) The discipline (dismissal) imposed upon Mr. W. McNeff by letter dated December 7, 2016 was on the basis of unproven charges, arbitrary, excessive and in violation of the Agreement (Carrier’s File NEC-BMWE-SD-5478D).**
- (3) As a consequence of the violation referred to in Parts (1) and/or (2) above, the Carrier shall rescind the aforesaid dismissal decisions and Claimant W. McNeff shall be reinstated to service immediately with full seniority unimpaired and compensated for all lost wages and benefits resulting from his improper termination.”**

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 Carrier has employed the Claimant, William McNeff, as a Trackman since March 24, 2014. On July 27, 2016, the Claimant was charged with violating the Carrier's Standards of Excellence pertaining to Attending to Duties and the National System Attendance Policy (hereinafter referred to as the "Policy"). The charges are based on allegations that the Claimant engaged in excessive absenteeism, lateness and early departures for the 12-month period preceding July 14, 2016. Subsequently, the Claimant was notified of additional charges on September 6, 2016, for violations of the same rules covering the period following July 14, 2016. A hearing and investigation was held for both charges on December 1, 2016. The Claimant did not testify on his behalf. On December 7, 2016, the Claimant was notified that the Carrier found him guilty for the charges of July 27 and September 6, 2016 and was dismissed from service. The record indicates that the Carrier denied subsequent appeals by the Organization and rendered its final decision on February 14, 2017. The Organization rejected the Carrier's decision and filed its notice of intent with the Third Division on May 12, 2017. The claim is now properly before the Board for adjudication. The Board has reviewed each record submitted separately and renders its decision regarding each set of charges in our Findings below.

The Carrier maintains that the Claimant has been unable to alter his poor attendance in spite of progressive discipline imposed for excessive absenteeism. Previous discipline resulted in a Waiver Agreement, dated August 5, 2015, and explicitly stated that he would be subject to dismissal if within a five-year period he continued to violate the Carrier's Policy. The Carrier contends it has provided the Claimant with opportunities to correct his absenteeism to no avail and that its "no-fault" attendance standard has been upheld by previous arbitration awards on its property, wherein even absences due to substantiated illnesses are subject to discipline.

The Organization argues that the Carrier's decision to dismiss the Claimant is arbitrary and capricious in that it fails to recognize that the absences were due to documented personal issues involving drug and alcohol use. It maintains that the Carrier ignored the Claimant's attempts to correct his behavior when he enrolled in a substance abuse counseling facility. The Organization avers that previous arbitration awards have ordered rehabilitation as a corrective measure instead of the harsh discipline of dismissal.

The Board finds that the Carrier has presented substantial documentary evidence and witness testimony to satisfy its burden of proof that the Claimant has violated its Policy and engaged in excessive absenteeism. The record indicates that the Claimant had ample opportunity to correct his poor attendance but has failed to do so. The Carrier has made efforts through progressive discipline to encourage rehabilitation but to no avail. We cannot therefore, consider the Carrier's decision to dismiss the Claimant to be arbitrary or capricious.

It is well established in the industry that leniency is reserved to the Carrier where there is no abuse of discretion. The record regarding the charges of July 27, 2016 does not contain any evidence that the Carrier was biased in dismissing the Claimant. The Claimant has been employed for a short period of time and amassed a poor disciplinary record. There is no basis to set aside the penalty imposed, and therefore, the Board need not review the record related to the charges of September 6, 2016.

In summary, we have reviewed and carefully weighed all the arguments and evidence in the record and have found that it is not necessary to address each facet in these Findings. We find that the Carrier has established with substantial evidence that the Claimant engaged in excessive absenteeism and violated the Carrier's Policy.

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 17th day of May 2019.