

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 44366
Docket No. MW-45815
21-3-NRAB-00003-200131**

The Third Division consisted of the regular members and in addition Referee Kathryn A. VanDagens when award was rendered.

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

PARTIES TO DISPUTE: (

**(National Railroad Passenger Corporation (AMTRAK) –
(Northeast Corridor**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- (1) The discipline (dismissal) imposed upon Mr. A. Lawson, by letter dated June 18, 2019, for alleged violation of Amtrak’s Standards of Excellence and National System Attendance Policy in connection with his excessive absenteeism from work was arbitrary, capricious and constituted a violation of the Agreement (Carrier’s File BMW-153775-D AMT).**
- (2) As a consequence of the violation referred to in Part (1) above, Claimant A. Lawson shall be reinstated to service with seniority and all other rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all lost wages.”**

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 had established and held seniority within the Carrier's Maintenance of Way Department over a period of ten years. On the dates giving rise to this dispute, he was assigned and working as a track foreman.

On February 15, 2019, the Claimant was given notice of an investigation in connection with the following charge:

"A current view of Mr. Lawson's attendance record for the 12-month period prior to and including 2/1/19 shows that he was absent from duty on the following dates:

- February 1, 2019**
- January 11, 17, 24, 25, 28, 29, 30, 31, 2019**
- June 13, 14, 18, 2018**
- April 2, 3, 4, 5, 6, 2018**
- March 29, 30, 2018.**

The foregoing dates represent and demonstrate that Mr. Lawson was absent three (3) occurrences in thirty (30) days prior to and including 1/28/19. In addition, Mr. Lawson was absent nineteen (19) days in the 12-month period prior to and including 2/1/19. Mr. Lawson is currently in violation in two (2) of three (3) categories of the threshold for excessive absenteeism as outlined within Amtrak's National System Attendance Policy."

After a formal investigation on June 13, 2019, the Claimant was found in violation of Amtrak's Standard of Excellence and Amtrak's National System Attendance Policy and was dismissed from the Carrier's service.

The Carrier contends that the Claimant's 12-month Absenteeism Report established his violations in that he was absent on three occurrences in a 30-day period. In addition, the Claimant was also absent in 2018 for 19 occurrences in the 12-month period. The Carrier contends that therefore, the Claimant was in violation of

two thresholds for excessive absenteeism as outlined in Amtrak's National System Attendance Policy.

The Carrier contends that there is no question that the Claimant was absent on all of the charged dates and the Organization's proffered excuses for those absences need not be considered under the Carrier's "no fault" attendance policy. The Carrier contends that prior to these unexcused absences, the Claimant was on a medical leave of absence but returned to work and then incurred these absences.

The Carrier contends that dismissal was warranted, as the Claimant had previously received a reprimand, and a ten-day suspension for attendance violations and other discipline. Therefore, the Carrier contends, dismissal was the appropriate penalty under the progressive discipline policy.

The Organization contends that during the occurrences at issue here, the Claimant had suffered a series of successive and great personal losses and was under the care of medical providers for serious physical and psychological conditions. The Organization concedes that the Claimant was absent on all the cited dates but contends that the Claimant was absent for a justifiable reason which should mitigate any discipline.

The Organization contends that the Claimant has been a valued employee for ten years, lauded by his supervisors and coworkers, 12 of whom wrote statements in support of him. The Organization contends that the penalty of dismissal is unduly harsh and excessive under all the circumstances here.

The Board finds that there is sufficient evidence to support the Carrier's determination that the Claimant violated its Attendance Policy. The Claimant does not deny that he was absent on the charged days and he was not, at the time, on any leave that would have excused the absences. Such a large number of absences clearly violated the Carrier's National System Attendance Policy and Standards of Excellence.

The Organization does not dispute the violation so much as the penalty, and that is where the Board's attention must turn next. Here, the Claimant suffered a series of significant losses and upheavals in a short period of time: deaths of several close family members; separation from his wife; becoming a single parent; an incident in which his mother was assaulted and his dog was killed; a serious on-the-job injury,

the onset of a serious illness; and resulting mental illness. The Claimant did take a leave of absence from work to cope with these events, but in his words, "I tried to return too soon."

Based upon the unique circumstances of this case and without precedent for any future similar claims, this the Claimant is returned to duty without back payment, but with all other rights and privileges intact.

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 Claimant(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 6th day of January 2021.