

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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CASE NO. 18

AWARD NO. 18

Public Law Board No. 2406 was established pursuant to the provisions of Section 3, Second (Public Law 89-456) of the Railway Labor Act and the applicable rules of the National Mediation Board.

The parties, the National Railroad Passenger Corporation (Amtrak, hereinafter the Carrier) and the Brotherhood of Maintenance of Way Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Sections 1 and 3 of the Railway Labor Act.

After hearing and upon the record, this Board finds that it has jurisdiction to resolve the following claim:

"The Carrier violated the effective Agreement dated May 19, 1976, on February 20, 1980 by arbitrarily and capriciously suspending Claimant W. D. Burgess for ten (10) working days.

Claimant Burgess shall be compensated for the time lost and the discipline expunged from his record."

At the time of discipline, the Claimant was assigned to the position of Engineer, Work Equipment-B, headquartered at Baltimore, Maryland. By notice dated January 14, 1980, the Carrier notified

the Claimant to report to the office of the Supervisor of Track at Perryville, Maryland, for a formal trial on January 22, 1980, regarding the following charge:

"Violation of the Absenteeism Agreement between Amtrak and the BMWF.

Unauthorized absences on the following dates:

January 3, 1980
January 7, 1980
January 9, 1980"

By letter dated January 28, 1980, the Claimant was notified that the trial was postponed and rescheduled, by mutual agreement, for February 6, 1980. On the basis of facts developed at the trial, the Claimant was notified by letter dated February 20, 1980, that he was assessed a ten (10) day suspension. Discipline was appealed to the Assistant Chief Engineer-Track and then to the Director-Labor Relations and was denied at both levels.

The Carrier asserts that the record demonstrates that the Claimant was in violation of the Absenteeism Agreement of October 26, 1976, for the second time in a twelve month period, and that the discipline imposed was commensurate with the proven offense.

Item 1 of the Absenteeism Agreement reads as follows:

- "1. Maintenance of Way Employees absent from work without permission or legitimate cause shall, on the first offense, be served a written notice advising them that unauthorized absence from work will not be tolerated and could subject them to discipline. A copy of such notice will be furnished the General Chairman of the area involved.

'Legitimate cause' is interpreted to mean illness of the employee or of a member of his household requiring his personal attention; or attendance in court. In cases where the employee reports off ill, resulting in absence of three (3) or more days, a doctor's certificate of treatment or examination by a Company physician will be required before return to duty is permitted."
(Board emphasis)

The issue presented is: Did the Claimant have "legitimate cause" to be absent on the dates involved? The record reveals that the Claimant was absent on the dates set forth in the charge and that he failed to request permission to be absent on those dates.

This Board finds that on January 3, 1980 the Claimant was absent without legitimate cause, as that term is defined by the parties' agreement. However, on January 7, 1980 and January 9, 1980, the Claimant's absences were not shown to be without legitimate cause.

In any event, the discipline shall remain unchanged because the Claimant's January 3, 1980 violation was his second unauthorized absence in a twelve month period. The Absenteeism Agreement provides as follows:

- "2. Maintenance of Way Employees who are found guilty of unauthorized absence from work on the second offense shall be subject to discipline of ten (10) working days' suspension.
3. Maintenance of Way Employees who are found guilty of unauthorized absence from work for the third time within a 12-month period shall be subject to dismissal from service. The 12-month period shall start as of first offense as indicated under Item 1 of this Agreement."

Although paragraph 2, quoted above, does not specify that the second proven unauthorized absence must occur within the

twelve (12) month period, when paragraph 2 is read in conjunction with paragraphs 1 and 3, we find a system of discipline for absenteeism which contemplates progressive penalties during a consecutive twelve (12) month period.

In this case, the Claimant had previously received the requisite written notice, dated June 1, 1979, for his absences without permission on May 7 and 16, 1979.

On January 3, 1980, the Claimant was absent from work because he had an appointment with his attorney concerning an accident claim. The Claimant produced a letter from his attorney stating that the Claimant had been in the attorney's office on that day. The Agreement provides that an appearance in court is a legitimate cause for absence. The Claimant's presence in his attorney's office to discuss an accident claim is not the type of absence excused by the Agreement. A visit to an attorney about a pending or potential legal matter is not "attendance in court." The Claimant should have made arrangement with his attorney to schedule his appointment during non-work hours or he should have attempted to get permission for the absence.

The Claimant is the incumbent of a highly specialized position in a work gang. The Carrier cannot easily fill the position at the start of a work day unless it has prior knowledge that the incumbent of the position will not be reporting. The Claimant's absence on January 3, 1980 was not for legitimate cause, and, since this was his second unexcused absence, the discipline assessed was imposed in accordance with the Absenteeism Agreement.

The Claimant's absences on January 7 and 9, 1980 were for legitimate cause and his personnel record should thus be cleansed of these alleged unauthorized absences. The Claimant produced a hospital receipt from the emergency room of Johns Hopkins Hospital. The receipt adequately meets the specifications of legitimate cause: "illness...requiring his personal attention." If the Carrier was not satisfied with the medical documentation provided it could have properly requested additional information regarding the medically-related absence, or sought verification from the medical source.

However, since the Carrier has proven that the Claimant was absent without authority on January 3, 1980, the claim will be denied.

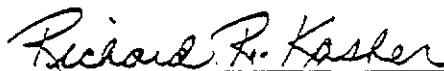
AWARD: Claim denied.



R. Radke, Carrier Member



W. E. LaRue, Organization Member



Richard R. Kasher, Chairman
and Neutral Member

September 20, 1981
Philadelphia, PA