

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CASE NO. 26

AWARD NO. 26

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:

- "(a) The Carrier violated the effective Agreement dated May 19, 1976, on October 16, 1979, by unfairly and unjustly dismissing Claimant Alfred Abrams.
- (b) Claimant Abrams shall be reinstated to service with seniority unimpaired."

At the time of his dismissal, the Claimant, Alfred Abrams, was employed by the Carrier as a Trackman with headquarters in Wilmington, Delaware. By certified letter dated July 17, 1979, the Claimant was directed to attend a trial on August 9, 1979. However, the Claimant was later notified that the trial was

postponed and by mutual consent rescheduled for October 4, 1979. The Claimant did not appear at the trial, but his representative was there and the trial was held in absentia.

The charge against the Claimant was that he had violated Amtrak's Rules of Conduct, specifically Rule "L", by excessive unauthorized absence from April 18, 1979, through the date of the July 17, 1979, notice of trial.

Rule "L" reads, in pertinent part: "Employees shall not... be absent from duty...without proper authority."

The Claimant was found guilty of the charge and was notified by letter dated October 16, 1979, that he was being dismissed from the Carrier's service effective immediately. The Claimant appealed his discharge which was denied by letter of January 14, 1980.

The record shows that the Claimant was absent from duty during the period April 18, 1979, through the date of the notice letter, July 17, 1979, except for April 23, 1979, when he was present. Each day of absence was without permission, and in fact, the Claimant had not requested permission to be absent. On the one day he was present, he did not indicate why he had been absent previously nor why he might be absent in the future.

The Carrier argues that the decision to assess the penalty of dismissal was in accord with progressive discipline, in that the Claimant had previously been given a first notice for six (6) days of unauthorized absence in April and May of 1978, and a ten day suspension for thirteen (13) days of unauthorized absence in July and August, 1978.

The Organization argues three points for consideration. First, the charge is not accurate or specific because the record shows that the Claimant did come to work on April 23, 1979. Second, the penalty of dismissal is a violation of the parties' written agreement concerning absenteeism, dated October 26, 1976. Third, dismissal is too harsh a penalty and the Organization requests that the dismissal be mitigated.

Technically, the charge contained in the July 17, 1979 notice is deficient, but the deficiency is so minor as to be of no consequence.

A more significant contention concerns the Absenteeism Agreement which provides that unauthorized absences during a twelve-month period will be punished first, by a written warning, then a ten day suspension, and then dismissal. The twelve-month period begins as of the first offense.

The first offense in this case involved absences on April 6, 19, 21, and May 9, 10, and 12, 1978. The third offense, for which the Claimant was dismissed, began on April 18, and ended on July 17, 1979. It can be seen that the beginning of the first offense, April 6, 1978, and the end of the last offense, July 17, 1979, cover a period of more than twelve months; but it is also true that part of the first offense and part of the third offense are all contained in a twelve-month period, for example, May 9, 1978 through May 8, 1979.

However, this Board views the duration of the third unauthorized absence to be the significant element to this case. An unauthorized absence spanning three months, is more than mere absence. In effect, the Claimant abandoned his position. (While not formally part of the charge, it may be noted that the Claimant continued his absence through at least the date of the trial, October 4, 1979.) Such a long-term, unexplained, and unjustified absence provides a basis for the Carrier to have concluded that discharge was the appropriate penalty.

Finally, there is nothing in the record to show that the Carrier's imposition of discipline was arbitrary. Accordingly, the claim will be denied.

AWARD: Claim denied.



R. Radke,
Carrier Member



W. E. LaRue,
Organization Member



Richard R. Kasher, Chairman
and Neutral Member