

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 3038

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
-and-	*	CASE NO. 3
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	*	AWARD NO. 3
	*	

Public Law Board No. 3038 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 Employes (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:

- "1. The Carrier has violated the current Schedule Agreement when assessing Claimant Paul Ioveino, Trackman, ten (10) days suspension for his alleged unauthorized absenteeism.
2. The Claimant, Paul Ioveino, should now be allowed the remedy of Rule 74(d) of the current Schedule Agreement."

Claimant Paul Ioveino was employed by the Carrier as a Trackman during the period covered by this claim. By letter dated April 30, 1980, Claimant was notified to report for trial in connection with

"Violation of Rule K of National Railroad Passenger Corporation General Rules of Conduct which states: 'Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor,' and violation of Rule L of NRPC General Rules of Conduct which states: 'Employees shall not sleep while on duty, be absent from duty, exchange duties or substitute others in their place, without proper authority,' in that you were absent without authority on February 11, 12, 1980. Excessive absenteeism February 14 (called); February 26 (called); March 10 (called). March 17th, worked 7 hours; March 18th, worked 3 hours; March 25, worked 5 hours; March 28, worked 5 hours; April 2, worked 7 hours; April 7, worked 5 hours; April 10, worked 5 hours. Your past personel record will be reviewed at this time."

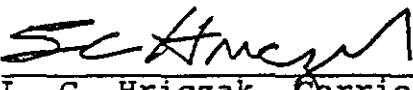
By letter dated May 30, 1980, Claimant was notified that he was assessed a ten (10) working days suspension commencing June 23, 1980, through July 7, 1980.

The record shows that Claimant admitted many of the absences cited in the charge, but also offered explanations for them and presented a letter to the hearing officer "...from two foremen for verification that they were informed that I was leaving early..." The letter was not placed in the record.

The absenteeism agreement between the Carrier and the Organization provides for discipline for unauthorized absence from work, but it also defines circumstances where there is "legitimate cause" for absence. The lack of the Claimant's letter in the record, as well as the failure to explore the reasons offered by the Claimant in his testimony, are fatal flaws to the Carrier's case. These would perhaps have provided rebuttal to the Carrier's charges. As it is, the record leaves open the question.

of whether some or all of the charged absences might fall in the "legitimate cause" categories. For this reason the Carrier has failed to meet its burden of proving, by substantial evidence, that the Claimant has violated Rules K and L. Accordingly, this claim must be sustained.

AWARD: Claim sustained.



L. C. Hriczak, Carrier Member



W. E. LaRue, Organization Member



Richard R. Kasher, Chairman
and Neutral Member

June 1, 1982
Philadelphia, PA.