

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 3038

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

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* CASE NO. 9
* AWARD NO. 9
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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 Employees (hereinafter the Organization), are duly constituted carrier and labor organization representatives as those terms are defined in Section 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 current Rules Agreement effective May 19, 1976, as amended, particularly the October 26, 1976 Absenteeism Agreement, Sections 1, 2, and 3, when it assessed discipline of dismissal on Trackman N. DeLucia on March 18, 1983.
- (b) Claimant DeLucia be restored to service with seniority and all other rights unimpaired, his record cleared, and compensated for all wage loss suffered in accordance with Rule 74(d)."

Mr. N. J. DeLucia, hereinafter referred to as Claimant, was employed by Amtrak on August 1, 1977, as a Trackman on the Carrier's Boston Division. At the time of the incident here involved he was working as a Trackman on the Boston Division.

By letter dated March 7, 1983, Claimant was notified to attend a trial in connection with the following charge:

"Violation of Absenteeism Agreement by and between National Railroad Passenger Corporation (Amtrak) and the employees represented by the Brotherhood of Maintenance of Way Employees in that you were absent on:

January 20, 1983; February 2, 3, 7, 9, 14, 17, 23, 24 and 25, 1983; and March 1 and 2, 1983."

The trial was held as scheduled. The Claimant and his duly authorized representative were present, indicated a willingness to proceed and were permitted to make statements and present evidence on behalf of the Claimant.

Claimant was notified by letter dated March 18, 1983, that he was assessed the discipline of "immediate dismissal - to become effective on receipt of this letter."

Claimant appealed this matter which has been progressed through Carrier's highest officer designated to handle such matters.

The Absenteeism Agreement of October 26, 1976, which this Board has reviewed many times, establishes a three step progressive disciplinary system for absences from work without permission. Rule L of the Carrier's Rules of Conduct also provides for discipline for absence from duty without proper authority.

The Absenteeism Agreement provides for a written notice (first offense), a ten (10) day suspension (second offense) and dismissal (third offense in the twelve month period) for absences without permission.

The record shows that the Claimant received a written notice on January 6, 1983, pursuant to the Absenteeism Agreement for various absences without permission. This notice is unchallenged. On February 9, 1983, the Claimant received a Notice of Discipline for being absent without permission for a second series of numerous absences; this notice referenced Rule L and imposed a ten (10) day suspension (5 actual and 5 suspended) for the infraction. This discipline was not challenged.

In the record before this Board the Carrier charged and proved that the Claimant was absent without permission for a series of dates in January, February and March of 1983. The Claimant admitted that many of the charged absences were due to "personal problems out of my control" associated with his being involved in a divorce. The Organization's contention that the Carrier must prove that these absences were without authority is rejected by the Board.

After the Carrier has charged an individual with unauthorized absences, if authorization for some or all of the absences was obtained, it becomes the employee's obligation to raise those exculpatory defenses. The Claimant did not raise such defenses; rather he admitted that his absences were due to

personal problems and he offered no legitimizing causes for his absence from duty.


The only remaining question for this Board is whether the Carrier, by failing to cite the Absenteeism Agreement as opposed to Rule L in the February 9, 1983 Notice of Discipline, violated the progressive disciplinary scheme of the Absenteeism Agreement. Technically, that argument by the Organization is a good one. There is some reason to believe that the Claimant, under the terms of the Absenteeism Agreement, was entitled to progressive notice of where he stood in terms of the Agreement's graduated discipline steps. On the other hand, we note that this contention was not raised on the property and that the Carrier had sufficient cause based upon the Claimant's record of excessive absenteeism not only to discipline the Claimant for his January, February and March 1983 absences but to discharge the Claimant due to his atrocious record of absenteeism.

Even though the Organization did not specifically raise the argument regarding the implied notice provision of the Absenteeism Agreement until it filed its submission before this Board, the discharge was effected under the Agreement and this Board must give some weight to the Agreement's concept of progressive discipline. Again, at the same time the Claimant's

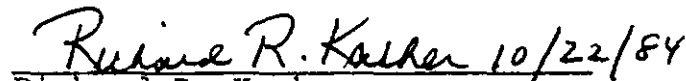
horrendous absentee record does not justify any award of back pay.

Accordingly, the claim will be sustained in part and denied in part.

AWARD: Within fifteen days of the receipt of this Award, the Claimant will be restored to service without back pay and with seniority unimpaired. He is on notice that while out of service his status under the Absenteeism Agreement was tolled so that he now returns to service, if physically qualified, and he may be discharged from service for the third infraction of the Absenteeism Agreement if his infraction occurs during the next nine and one-half months from his return to service.


L. C. Hriczak
Carrier Member


W. E. LaRue
Organization Member


Richard R. Kasher
Chairman and Neutral Member

September 28, 1984
Philadelphia, PA