

BEFORE

PUBLIC LAW BOARD NO. 3863

PARTIES TO DISPUTE:

NATIONAL BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

STATEMENT OF CLAIM:

- (a) The Carrier violated the current Scheduled Agreement effective May 19, 1976, as amended, particularly Rule 71(a), and the Absenteeism Agreement of October 26, 1976, when it disciplined Claimant Bruce Bentley on July 27, 1984.
- (b) The discipline imposed on Claimant Bentley was unjust, unreasonable, excessive, and a violation of managerial prerogative.
- (c) Claimant Bentley will be compensated for all wage loss suffered and his record cleared of the offense he was charged with on June 29, 1984.

By notice of trial dated June 29, 1984, the claimant was charged with violating the parties' "Absenteeism Agreement" (herein, the Agreement) by being absent from work on the following dates:

July 29, 1983; August 8, 1983;
October 19, 1983; February 10 and
14, 1984; and May 3, 1984; and
June 21, 1984.

An additional allegation charged the claimant with violation of Rule K of the Carrier's General Rules of Conduct by his early departure from work on April 24, 1984.

The Absenteeism Agreement prescribes progressive disciplinary measures for absence from work "without permission or legitimate cause" during successive 12-month periods. These are described as "unauthorized" absences. The charge in this case covered absences during a second successive 12-month period; if sustained, it could carry the penalty of a ten-day suspension.

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The trial was held on July 25, 1984. The claimant appeared and testified. He did not dispute the seven absences listed in the charge. He explained that he was sick on five of the days specified. On the remaining two days his car was not working. By Notice of Discipline dated July 27, 1984, the charge was sustained and a ten-day suspension was assessed against the claimant.

The Carrier asserts that the trial record conclusively establishes the fact of the claimant's unauthorized absences on the dates charged, and that the ten-day suspension conforms with the discipline prescribed by the Agreement.

The Organization has not disputed the occurrence of the absences specified in the charge. It has contested, on two different grounds, the validity of the discipline imposed for those absences. At the trial and on appeal on the property, the Organization argued that the five days of absence for illness should not have been treated as unauthorized. In its submission to this Board, the Organization contends that the charge was fatally defective because it was brought and tried too late. The 12-month limitation of the Agreement as read together with the 30-day trial scheduling provision of Rule 71(a), the Organization says, made the charge untimely. The timeliness argument needs no further elaboration in view of the Carrier's valid objection that it was not made on the property and may not therefore be considered at arbitration. It appears, in any case, that the parties agreed at oral argument before this Board on an interpretation of both limitations which would make the timeliness argument inapplicable to the facts of this dispute. The Organization's final and alternative argument is that the absences were not unauthorized; that they occurred on account of the claimant's illness.

FINDINGS: The Arbitrator finds on the whole record and all the evidence that the carrier and each employee involved in this dispute are Carrier and Employee within the meaning of the Railway Labor Act, as amended, and that the Board has jurisdiction over this dispute.

It clearly appears that the issue to be decided in this dispute is whether, as the Organization contends, the ten-day suspension was unwarranted on the evidence presented.

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The Board finds that "legitimate cause" as defined in the Agreement has not been shown for the seven absences specified in the charge.

Breakdown of the employee's car does not fall within the kinds of reasons recognized by the Agreement as "legitimate cause for absence from work." Illness of the employee is accepted as "legitimate cause," if proved by substantial credible evidence. That evidence is not present in this record. The claimant's unsupported statement that he was ill, made for the first time at the trial, cannot in itself be considered acceptable proof of legitimate cause. Without that proof, the five instances of claimed illness, like the two absences attributed to a car problem, can properly be regarded as "unauthorized absences from work."

It follows, then, that the claimant was subject to discipline under the Agreement. This was the claimant's second offense. He was warned after the first offense that a second infraction would be dealt with according to the Agreement. The ten-day suspension was expressly authorized by the Agreement. Accordingly, we cannot find that the discipline imposed was arbitrary or unreasonable or excessive, and hence, unwarranted. That being so, we are without authority to modify the discipline.

We make no finding as to the Rule K allegation. This charge received no attention at the trial. Even if proved, this additional infraction would not affect the decision we have reached.

The claim must be denied.

AWARD:

The claim is denied.

John Klaus
Neutral Member and Chairman

Seamus A
Carrier Member

John P. Reel
Brotherhood Member