

PUBLIC LAW BOARD NO. 4950

NEW JERSEY TRANSIT RAIL OPERATIONS, INC.	:	
"Carrier"	:	Case No. 16
	:	
vs.	:	
	:	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	:	Award No. 8
"Organization"	:	
	:	

STATEMENT OF CASES

J. A. Toomey - Dismissal from all Service.

OPINION OF THE BOARD

On December 16, 1988, Claimant allegedly failed to cover his assignment. Claimant did not notify Carrier that he would be absent on that date, did not subsequently explain his absence, and did not submit any documentation to verify the reason for his absence.

Carrier contends that the record evidence establishes that Claimant is guilty as charged. Carrier also maintains that in light of Claimant's overall work record, which included first and second warning notices for excessive absenteeism, discharge was the appropriate penalty.

The Organization contends that Claimant's discharge was improper, as he had not served prior and progressive discipline. In addition, the Organization maintains that Carrier erred by holding Claimant's hearing in absentia and not giving him the opportunity to be present and defend himself.


The Board has determined that the claim must be denied.

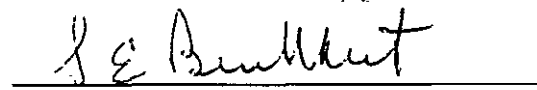
The record evidence is undisputed that Claimant failed to cover his assignment on December 16, 1988, and that he failed to provide advance notice of his absence or subsequently justify it. In light of this offense, and after careful consideration of Claimant's entire work history, the Board has determined that Carrier acted within its prerogative in terminating Claimant. Claimant had an extremely poor work record, and had in fact before been rescued from discharge only due to intervention of the Organization. Claimant also had a poor attendance record, which was replete with warnings and prior discipline. In these circumstances, Claimant had the responsibility to conduct himself beyond reproach. His absence on December 16 established that he failed to do so. The Board has further determined that Carrier committed no procedural errors which warrant setting aside otherwise justifiable discipline. Although the hearing on the property was held in absentia, the record reveals that Claimant was properly notified of his hearing through certified mail and that Claimant signed for and received this correspondence. There is no indication that Claimant requested a postponement of the hearing. In these circumstances, the claim must be denied.

AWARD

Claim denied.


W. B. Murphy
Carrier Member


W. E. LaRue
Organization Member


S. E. Buchheit
Neutral Member