

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 19

Case No. 20

System Docket No. BMW-D-162

STATEMENT OF CLAIM

Claim of the Brotherhood that:

(a) Carrier's dismissal of Claimant Larry Threadgill was without just and sufficient cause, was not based on any clear and probative evidence and was done in an arbitrary and capricious manner, wholly beyond the Scope of the Scheduled Agreement.

(b) Claimant Threadgill shall be reinstated into Carrier's service with all seniority entitlements and shall be compensated for all lost wages, including overtime benefits which would accrue to him, as provided for in Rule "K" of the Scheduled Agreement.

FINDINGS

By letter dated September 24, 1991, the Claimant was subject to an investigative hearing on two charges. The first charge concerned his alleged violation of the Carrier's Excessive Absenteeism Policy by his absence from duty on three dates within

a 30-day period (August 27, September 9, and September 13, 1991). The second charge concerned his alleged excessive absenteeism during a 21-week period in which he was absent ten days, including the three days referenced in the first charge. (One of these ten dates was challenged in the hearing and was not considered by the Hearing Officer in his findings.)

The Carrier's action must be considered in the context of the Claimant's previous disciplinary dismissal for attendance related matters. This previous dismissal was reviewed by the Board in Award No. 12. On November 15, 1990 the Board issued an Interim Award reinstating the Claimant, and on May 16, 1991 the Board issued a Final Award denying back pay or retroactive benefits. The Final Award stated in pertinent part:

There is full support . . . for the intervening time between [the Claimant's] dismissal and reinstatement to serve as an extended disciplinary suspension, to be retained on his record as a guide to the necessity for the Claimant to meet all requirements of his position in order to retain his employment relationship with the Carrier.

Disciplinary action prior to this included suspensions of ten and 15 days.

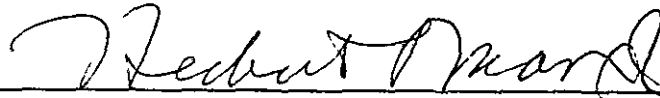
The absences here under review occurred shortly before and continued after the issuance of Final Award No. 20 which alerted the Claimant to his responsibilities.

Objections raised by the Organization are without merit. There is full support to determine that the Claimant was aware of the requirements for fully satisfactory attendance. It can only be concluded that the Claimant was unwilling or unable to conform

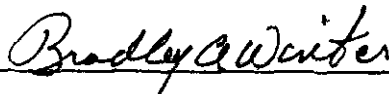
to reasonable attendance standards, despite repeated warnings of the consequence of failing to do so. The Board has no basis to modify the Carrier's dismissal action.

A W A R D

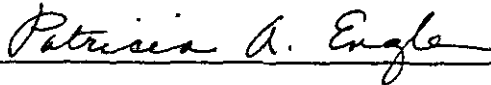
Claim denied.



HERBERT L. MARX, Jr., Chairman and Neutral Member



B. A. WINTER, Employee Member



P. A. ENGLE, Carrier Member

NEW YORK, NY

DATED: 10-27-92