

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 47

System Docket No. BMW-322D

STATEMENT OF CLAIM

(1) Carrier's dismissal of Claimant Amancio Pires 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.

(2) Claimant Pires 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 15 of the Scheduled Agreement.

FINDINGS

The Claimant was subject to an investigative hearing under the following charge:

Violating the Carrier's "Excessive Absenteeism Policy" for Maintenance of Way employees whereas you were absent or late on the following days:

January 6-7, 1998 -- Absent
January 12 -- Absent
January 13 -- Late Arrival
January 14, 16 -- Absent
January 19 -- Late Arrival
January 23 -- Absent

Following the hearing, the Claimant was dismissed from service.

The Carrier has had in effect since 1990 a Maintenance of Way Excessive Absenteeism Policy which includes the following:

Maintenance of Way Employees failing to report to work or reporting to work late, or departing from work early for (3) incidents in a thirty (30) day period are considered as being "Excessively Absent". In cases where the employee reports off "ill" for several consecutive days, this constitutes one (1) incident.

The Claimant, hired in July 1997, was subject to the Policy's progressive discipline three times within the first six months of employment. The final instances of absences and tardiness here under review clearly exceeded the limit of three absences in a 30-day period.

The Organization argues that unusual personal circumstances were the cause of the Claimant's unsatisfactory attendance. As found in several previous Awards, however, the established policy encompasses all absences, regardless of cause. Given the opportunity afforded the Claimant through progressive and hopefully corrective discipline, the Board has no basis to disturb the Carrier's dismissal action in line with its absenteeism policy.

As stated in Special Board of Adjustment No. 986, Award No.

167:

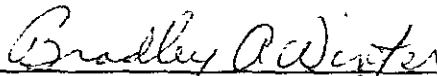
. . . this is an excessive absenteeism case and, therefore, as this Board has held on numerous occasions in the past, the reasons for the absence are not relevant.

A W A R D

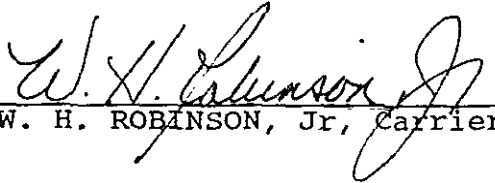
Claim denied.



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



B. A. WINTER, Employee Member



W. H. ROBINSON, Jr., Carrier Member

NEW YORK, NY

DATED: 2/9/99