

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)	*	
	*	
-and-	*	CASE NO. 28
	*	
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES	*	AWARD NO. 28
	*	

Public Law Board No. 2406 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 Sections 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 erred on February 14, 1980, by unfairly dismissing Claimant, Richard Elmer.
- (b) The Carrier hold the discipline imposed until the Claimant is available to be present and defend his absence."

The Claimant, Richard Elmer, was employed by the Carrier as a welder with headquarters at Wilmington, Delaware. By letter dated January 16, 1980, the Claimant was directed to report for trial on February 7, 1980, in connection with the following charge:

"Violation of National Railroad Passenger Corporation General Rule L, reading in part: 'Employees shall not...be absent from duty...without proper authority.'

Excessive unauthorized absence from December 5, 1979, through date of this notice."

One day earlier, on January 15, 1980, the Claimant had written to the Supervisor of the Track Department and asked for a 90 day leave of absence so that he "might take care of a personal matter." In the letter he said that he had hesitated to write a letter until that time because he had thought that the Supervisor was aware of the Claimant's "present situation." By that he meant that he was incarcerated.

The Supervisor, Track, replied on January 21, 1980, saying that the Claimant's letter did not provide a specific explanation of why such an extended leave of absence was needed. Consequently, the Supervisor, Track, found no justification for the requested leave, and it was denied.

The Claimant did not appear at trial. However, he was represented by the Organization which requested a postponement of the trial so that it could discuss the Claimant's problems with Mr. Ellis, the Assistant Chief Engineer, Track, in the hope of having the Claimant's requested ninety (90) day leave of absence approved. (Tr. pp. 2 and 6). The Carrier declined to postpone the trial and it was held in absentia. The Claimant was found guilty as charged and dismissed from the Carrier's service on February 14, 1980. The Claimant's appeal of his dismissal was subsequently denied by the Carrier.

Failure to grant the postponement contributed to the inability of the record below to reflect among other facts that the Claimant is a Vietnam veteran who developed a drug addiction problem while in the military; he was employed by the Carrier since September 10, 1975; and his work/discipline record, prior to the unauthorized absence involved in this case, was unblemished.

The record shows that as a result of an infraction of law not specified below, a court placed the Claimant in a work release program. The Claimant did not appear for work as required, which led to his removal from the program and his subsequent incarceration. The unauthorized absence followed from these events.

This Board finds that there is support in the record for the Carrier's decision to discipline the Claimant. He was absent without authorization through his own failure to adhere to the requirements of the work release program and his own transgressions. We also find that the duration of the absence, December 5, 1979, through January 16, 1980, is such as to take it outside the scope of the Absenteeism Agreement of October 26, 1976. In a companion case issued this date (Award No. 26), this Board sustained the Carrier's dismissal of an employee for a long-term unauthorized absence, and held that the duration of the absence was such that the requirements of the Absenteeism Agreement did not apply.

However, this Board finds that there are mitigating circumstances worthy of consideration in this case. The Claimant here did not abandon his position. He stated in his January 15, 1980, letter that he had not written earlier because he had thought that his Supervisor was aware of his "situation." The request for the ninety (90) day leave of absence was an indication of his interest in continuing in his position with the Carrier. While the Supervisor, who refused the leave of absence requested by the Claimant may have been unaware of the Claimant's incarceration, the record shows that the Claimant's situation was known to other responsible persons at the Wilmington Track Supervisor's Office. Indeed, the clerk in the Office arranged to have the Claimant's paycheck given directly to him in jail. (Tr. p. 5) Nevertheless, the notice of trial was sent to the Claimant's home address, which the Carrier had reason to know was not the most direct way to notify the Claimant. Also, by its refusal to postpone the trial, the Carrier virtually guaranteed that the Claimant would not be present at his trial.

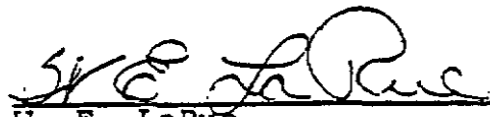
Although this Board recognizes that evidence before us is restricted to those facts developed on the property, nevertheless we were impressed by the Claimant's presence at the Board hearing; his statement that he is now enrolled in a Veterans Administration drug rehabilitation program; and his sincere request for restoration of his position. We also recognize

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that the Carrier is engaged in a business enterprise and that it does not function as a social rehabilitative agency. However, if our national policy is aimed at aiding Vietnam veterans, giving the Claimant an opportunity in these circumstances appears to be consistent with such policy. This Board believes he should be given another chance. Subject to the Claimant's providing verification that he is enrolled in an appropriate drug rehabilitation program and subject to his meeting the Carrier's physical requirements, he should be reinstated with seniority unimpaired, but without back pay.

AWARD: Claim denied.


R. Radke,
Carrier Member


W. E. LaRue,
Organization Member


Richard R. Kasher, Chairman
and Neutral Member

February 3, 1982
Philadelphia, PA