

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD CORPORATION (AMTRAK)	*
-and-	*
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES	* Case No. 58
	* Award No. 58
	*
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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:

"The Carrier violated the effective Agreement dated May 19, 1976 on February 3, 1981 by unfairly and unjustly dismissing Claimant Paul DeSantis.

The Carrier shall restore the Claimant to service with seniority and benefits unimpaired and compensated for all wage loss suffered on account of the dismissal."

Background Facts

Mr. Paul DeSantis, hereinafter the Claimant, was employed as a Carpenter in Philadelphia, Pennsylvania at the time of his dismissal from service by the Carrier on February 3, 1981.

On December 19, 1980 the Carrier notified the Claimant that he was to appear for an investigation regarding charges that he had been absent without authorization from work on December 8, 10, 15, 17 and 18, 1980.

These charges were addressed in an investigation held on January 29, 1981. The Claimant appeared at the investigation and was represented by a duly authorized member of the Organization. The Claimant was afforded the opportunity to present witnesses and testify in his own behalf and to cross-examine the witness produced by the Carrier.

The Carrier determined after review of the record that the Claimant had violated the Absenteeism Agreement and in accordance with the schedule of discipline provided in that agreement the Carrier dismissed the Claimant from service. The claim is now before this Board for adjudication.

Position of the Carrier

Initially, the Carrier contends that the Claimant did not timely appeal his discipline. The Carrier's contention is based upon the fact that the Claimant did not sign the letter which was presented to the Carrier challenging the imposition of discipline. The Carrier argues that when it received the unsigned letter that it gave the Claimant an opportunity to "perfect" his appeal by submitting a signed letter challenging the discipline. The Carrier points out that the Claimant never responded to this invitation and accordingly the Carrier contends that the appeal was never properly made under the Agreement's time limits.

In addressing the merits of the dispute, the Carrier contends that the Claimant's guilt regarding the alleged unauthorized absences was proven beyond doubt. The Carrier contends that the Claimant had not requested permission to be absent on the days charged and that the record supports the fact that the Claimant had been absent without authority.

The Carrier, in responding to the Organization's claim that it committed a procedural defect in the appeal processing, contends that the fact that it mistakenly typed "Rule 14" as opposed to "Rule 74" is not a fatal procedural defect. The Carrier points out that when the error was

discovered it was corrected in a subsequent piece of correspondence and that, in any event, the Claimant was not prejudiced by this clerical error.

In these circumstances, the Carrier contends that the discipline imposed was based upon proven charges and that the quantum of discipline was not disproportionate to the offense or inconsistent with the discipline schedule contained in the Absenteeism Agreement. Accordingly, the Carrier requests that the claim be denied.

Position of the Organization

The Organization contends that the Carrier's failure to grant an appeal hearing based upon the fact that the Claimant did not sign his appeal letter is a procedural defect which should result in the sustaining of the claim. The Organization contends that the Claimant's appeal letter was clear and understandable and that it bore a typed signature. The Organization argues that there is no requirement in the rules that an appeal letter be personally signed by the Claimant. Accordingly, the Organization contends that the Claimant complied with the time limits of the Agreement and should have been granted an appeal hearing.

In addressing the merits of the claim, the Organization

points out that the record evidence establishes that the Claimant testified that he called in on the dates in question and reported off. The Organization argues that the Carrier was unable to refute the Claimant's testimony that he and/or members of his family called-in on the dates in question to report that the Claimant would not be available for work. The Organization also points to evidence in the record which establishes that the Claimant was suffering from a stiff neck during the days in question and this prohibited his appearing for work.

Finally, the Organization has raised a procedural objection because the Carrier referenced Rule 14 of the Agreement when it wrote to the Claimant on April 14, 1981 regarding the Claimant's alleged failure to properly appeal the decision of dismissal. The Organization points out that Rule 14 has no relationship to the appeal process and therefore the Carrier committed a procedural error which should result in sustaining of the claim.

The Organization requests that the Claimant be restored to service with seniority unimpaired and be paid for all wage loss and lost benefits.

Findings and Opinion

The Board is unimpressed with either the procedural objections raised by the Carrier or the Organization. Clearly, the Carrier's mistake in its letter of April 14, 1981, when it noted the wrong rule, did not act to the Claimant's detriment. The Carrier corrected this clerical error as soon as it was discovered (10 days later), and there is no showing that the Claimant was not put on proper notice regarding the Carrier's position. In the same vein, the Carrier was not prejudiced when it received the Claimant's appeal letter which did not bear a written signature. The letter put the Carrier on notice regarding the nature of the Claimant's position and appeal and therefore, in this Board's view, the Carrier cannot claim that the appeal was untimely filed. We recognize that one of the steps in the appeal process may have been skipped as the result of the Carrier's not granting the Claimant the appeal hearing on the basis of this alleged unsigned appeal. However, the totality of the record indicates that the claim was sufficiently discussed below and that the alleged procedural errors did not prejudice either party in terms of the requirements and intentions of the appeal process in the parties' grievance procedure. Accordingly, this Board will review the merits of the claim.

The Organization and the Carrier are parties to an Absenteeism Agreement which provides a progressive system of disciplining employees who are absent without legitimate cause three times within a twelve month period. The facts in the record establish that when the Claimant was charged for the absences in the instant case that he had reached the third or last step in the process. The evidence of record also establishes that the Carrier had no record that the Claimant or a member of his family had called him off sick or with any legitimate excuse for the dates in question.

Although the Claimant has testified that he called in on the dates in question, the Carrier presented substantial evidence that no such calls were received. The Carrier's Supervisor of Structures, H. T. Mentzer, sponsored the attendance log and testified that there were no entries in that log for the dates in question which establish that the Claimant or anyone on behalf of the Claimant called the Claimant off on those dates. The evidence of record establishes that this attendance log is a business record which the Carrier maintains in its ordinary course of affairs and there is no showing that the log was not properly maintained.

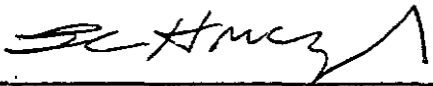
The Claimant's only defense is an unsupported allegation that he called in. He was not able to establish when he

called in, to whom he spoke, or to present any evidence which would challenge the Carrier's records that the Claimant was absent without authority.

In these circumstances, this Board finds that the Carrier complied with the requirements of the Absenteeism Agreement and that the discipline of dismissal was consistent with the schedule of discipline established by that Agreement.

Accordingly, the claim will be denied.


AWARD: The claim is denied.



L. C. Hriczak,
Carrier Member



W. E. LaRue,
Organization Member



Richard R. Kasher,
Chairman and Neutral Member

August 3, 1985
Philadelphia, PA