

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 2406

NATIONAL RAILROAD CORPORATION (AMTRAK)
-and-
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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* Case No. 59
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* Award No. 59
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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 11, 1981, by unfairly and unjustly dismissing Claimant Harold Johnson.

Claimant Johnson shall be reinstated to service with seniority unimpaired and compensated for all wage loss suffered."

Background Facts

On January 21, 1981 the Carrier issued a notice of investigation to Mr. Harold Johson, hereinafter the Claimant, to attend a trial to determine his alleged unauthorized absence from duty on January 13, 14, and 15, 1981.

On February 3, 1981 the investigation was conducted at 30th Street Station in Philadelphia, Pennsylvania. The Claimant attended and was represented by a duly authorized officer of the Organization.

As a result of the investigation the Carrier determined that the Claimant was absent without authorization on the days in question, and as this was his third offense under the Absenteeism Agreement, the appropriate measure of discipline, consistent with the Agreement's schedule, was dismissal from service. The Claimant was dismissed and the claim is now before this Board for adjudication.

Position of the Carrier

The Carrier contends that the Claimant was absent on the dates set forth in the charge and that he was absent without permission. The Carrier contends that the Claimant has admitted his absences and finds no mitigating reasons to

excuse those absences.

The Carrier further contends that the Claimant was treated leniently, even in the context of the Absenteeism Agreement, as he was given more than the three opportunities in a twelve month period to be absent without authorization prior to having his service terminated. In these circumstances, the Carrier contends that the Board should not disturb the imposition of discipline.

Position of the Organization

The Organization does not dispute that the Claimant was absent on January 13, 14, and 15, 1981. The Organization does argue that the Carrier should have taken into consideration the Claimant's situation. Specifically, the Organization points out that the Claimant was at his father's bedside in Graduate Hospital, Philadelphia, Pennsylvania during the period in question. The Organization points out that a Doctor Burros wrote to the Carrier and indicated that the Claimant was absent from work and that his presence at the hospital, at his father's side who was very ill, was considered to be necessary.

In these circumstances, the Organization contends that the Claimant's absence was one which falls within the defi-

inition of "legitimate cause" as that phrase is used in the Absenteeism Agreement. Accordingly, the Organization seeks to have this Board restore the Claimant to service and to compensate him for all wage loss and loss of benefits.

Findings and Opinion

Although this Board is persuaded that the Claimant's father was seriously ill on the dates in question and was residing in Graduate Hospital awaiting surgery, nevertheless we do not find any reason in the record to excuse the Claimant from, at least, calling in and reporting to appropriate supervision that he was not going to be able to attend work.

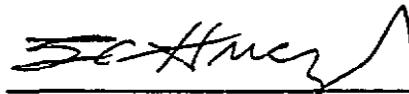
Additionally, the Carrier has made rational argument to the effect that the Claimant would have more justifiably been out of work during the day that his father was actually undergoing surgery. There is no reason for this Board to conclude that the Claimant could not have had another member of his family, a friend or some other individual call and notify the Carrier at some point in time during his absence that he was not going to be available for work.

The Board also recognizes that the Carrier treated the Claimant leniently in terms of the schedule of discipline

contained in the Absenteeism Agreement. There is no showing that the Claimant was not aware of his obligations to comply with the Absenteeism Agreement and/or to notify management when he would not be available for work.

In these circumstances, the Board is constrained to deny the claim.

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