

NATIONAL MEDIATION BOARD
PUBLIC LAW BOARD NO. 3038

NATIONAL RAILROAD CORPORATION (AMTRAK)

-and-

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

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* Case No. 8
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* Award No. 8
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Public Law Board No. 3038 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:

"That the suspension of EWB-B Machine Operator Kevin Chappell for ten days for allegedly being absent from work without authorization was without just and sufficient cause, the decision being based on charges not supported in the trial transcript.

The suspension of Kevin Chappell for thirty days for alleged violation of Amtrak Rules of Conduct, Rule I, was without just and sufficient cause, the decision being based on charges not supported in the trial transcript.

That Claimant Chappell's record be cleared of the charges brought against him on March 31, 1981, and com-

pensation at the prevailing rate of Machine Operator EWB-B, be paid for all wages lost as provided under Rule 74(d) of the current Schedule Agreement."

Background Facts

On March 31, 1981 EWB-B Machine Operator Kevin Chappell, hereinafter the Claimant, was issued a notice of investigation. The notice charged the Claimant with being absent from work on October 31, November 3, December 19, 1980, January 9, February 3, February 9, February 10, February 18, and March 23, 1981. The notice also alleged that the Claimant had falsified documentation to excuse his absence of Monday, March 23, 1981.

In accordance with this notice of investigation the Carrier conducted a hearing on April 28, 1981. The Claimant attended the hearing and was represented by the Organization. At this hearing the Claimant was afforded an opportunity to present witnesses and to testify in his own behalf regarding the charges.

Subsequent to the conclusion of the investigation, the Carrier concluded that the Claimant was guilty of the list of charges and assessed a ten day disciplinary suspension for his alleged absences and a thirty disciplinary suspension for his allegedly falsifying documentation excusing the absence of March 23, 1981.

Position of the Carrier

The Carrier contends that the Claimant admitted his absences for the days charged during the investigation. The Carrier contends that admissions of guilt must result in a finding that the Carrier has sustained its burden of proof.

The Carrier also contends that the Claimant admitted that he was absent on March 23, 1981 for "personal reasons" and therefore the doctor's note which he presented for that date was clearly a fabrication. Additionally, the Carrier contends that the Claimant was shown to have not obtained the note from the Doctor Anderson who allegedly signed it.

In these circumstances, the Carrier contends that it had just and sufficient cause for disciplining the Claimant under the terms of the absenteeism agreement, and as the offense was the Claimant's second violation of the agreement within a twelve month calendar period that the ten-day suspension was appropriate as the prescribed discipline. The Carrier also contends that it had just and sufficient cause for disciplining the Claimant for falsifying documentation and that the thirty day suspension assessed was not arbitrary or overly severe.

Position of the Organization

The Organization contends that the Claimant was not afforded a fair and impartial trial. The Organization argues that the Carrier improperly combined the two charges in one investigation.

The Organization also contends that the Claimant's removal from service, in face of known circumstances, was unjustified and an abuse of managerial prerogative.

The Organization also contends that the charges, as presented, were ambiguous and that the Carrier did not establish that the Claimant was absent on the days in question. The Organization also contends that the charges were unproven. In these circumstances, the Organization contends that the Carrier has failed to meet its burden of proof and therefore the disciplines imposed were unwarranted.

The Organization therefore requests that the Claimant's record be cleared of the charges and that he be made whole for all lost pay and benefits as a result of the improper imposition of discipline.

Findings and Opinion

Let us first address and dispose of the Organization's procedural objection to the Carrier's combining of two separate charges in a single investigation. There is no showing that the charges were not sufficiently related. Thus the Carrier properly proceeded in a single investigation to address these multiple charges. It is not uncommon in the railroad industry for multiple charges to be addressed in a single disciplinary investigation, and there is no showing, in the instant case, that the Claimant was prejudiced by the consolidation of the charges in a single investigation. Additionally, there is no showing that the Claimant was unprepared to address any of the charges or that the notice of investigation was not sufficiently specific to put the Claimant on adequate notice. Accordingly, the Board finds that the merits of the claims should be addressed.

Turning first to the contention that the Claimant violated the absenteeism agreement, the Claimant challenged the allegation that he was absent on all of the days specified in the notice. The Carrier's Conducting Officer asked the Claimant which days he contended he was not absent. The Claimant requested that his personnel files be "pulled" because he could not remember with specificity

which days he was in attendance. As a result of this statement, the Organization representative requested the Carrier to produce documentation of the days in question which would establish that the Claimant was either on or off duty or in or not in attendance. The Carrier's Conducting Officer committed, at page four of the transcript, to produce the necessary personnel records and to make that information part of the transcript. A review of the totality of the transcript and evidence submitted to this Board establishes that the Carrier never produced any documentation regarding the Claimant's alleged absences on the days in question. The Board recognizes that the Claimant did admit, in part, that he was absent on some of the days in question, or on one of the days in question. The record is not sufficiently clear. The Carrier has produced no further evidence to establish how many days the Claimant was allegedly absent improperly.

It is clear that the Carrier has failed to meet its burden of proof in the charge that the Claimant violated the Absenteeism Agreement. As the record stands and as it was reviewed by Carrier Officers prior to determining to impose discipline there was a showing that the Claimant was allegedly absent, presumably without legitimate cause (as that term is used in the Absenteeism Agreement), on nine days.

Yet the Carrier has not specifically proven absence on any of those days. This Board cannot presume that the Carrier reviewing representatives would have disciplined the Claimant if it had been shown that he was only absent on one, two or maybe three of the days in question. Without proof in the record of when the Claimant was absent or if he was absent, this Board must conclude that the Carrier could not properly discipline the Claimant for violation of the Absenteeism Agreement. Accordingly, the claim will be sustained and the ten-day disciplinary suspension assessed the Claimant shall be removed from the record and he shall be made whole for the loss of pay associated with that ten calendar day suspension..

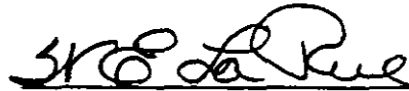
The Carrier has also charged the Claimant with providing false documentation excusing his absence of March 23, 1981. Again, the Carrier has relied upon evidence which is not fully supported by probative testimony. The Claimant has contended that the return to work certificate that he received from Doctor Anderson was signed by a nurse in Doctor Anderson's office. The Carrier has established that Doctor Anderson did not see the Claimant on the day in question. However, that finding begs the issue. There is no showing that the Claimant falsified the documentation involved. In fact, one would presume that the Claimant was

not the author of the alleged falsified note as not only was the word "clinic" misspelled but the Claimant's first name was spelled "Keven" as opposed to "Kevin". It is not likely that the Claimant misspelled his own name in the drafting of the note. Additionally, there is evidence in the record that the nurse or the secretary who was involved in the incident did not give her name to Carrier personnel because she did not want "to get involved". There is no showing that the nurse or secretary in Doctor Anderson's office was not authorized to issue a note to the Claimant returning him to service. Additionally, although the Carrier has proven that a Doctor Anderson did not sign the note, that fact does not establish that the Claimant provided false documentation to the Carrier. Accordingly, the Board finds that the Carrier improperly disciplined the Claimant by imposing a thirty calendar day suspension and that discipline shall be removed from the Claimant's record. The Claimant should also be made whole for all lost pay and benefits associated with the discipline and his seniority shall be restored for the two suspensions which amounted to forty days.

AWARD: The claims are sustained in accordance with the
above findings.




L. C. Hriczak,
Carrier Member



W. E. LaRue,
Organization Member

I DISSENT. THE MAJORITY OF THIS BOARD
CAN NOT PROPERLY RECOGNIZE APPELLANT'S
ADMISSION OF GUILT TO PART OF
THE CHARGES AND FIND
COMPLETE EXONERATION.


Richard R. Kasher,
Chairman and Neutral Member

August 3, 1985
Philadelphia, PA