

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 4979

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

and

NATIONAL RAILROAD PASSENGER CORPORATION

AWARD NO. 12

Case No. 12

Carrier File No. BMW-D-132

STATEMENT OF CLAIM

Claim of the Brotherhood that:

(a) Carrier's dismissal of Claimant L. Threadgill 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.

(b) Claimant Threadgill 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 "K" of the Scheduled Agreement.

F I N D I N G S

On November 15, 1990, the Board issued an Interim Award reinstating the Claimant to service, without resolution of the matter of claim for back pay. This Award addresses what penalty, if any, should apply to the Claimant.

Award No. 11 supported a 15-day deferred disciplinary suspension assessed to the Claimant for absenteeism. This had followed a previous 10-day deferred suspension and a warning letter, both for absenteeism.

In this dispute, the Claimant was subject to an investigative hearing concerning his alleged absence without authorization on April 24-25 and May 13, 1990, and late reporting on May 18, 1990. Following the hearing, the Claimant was dismissed from service.

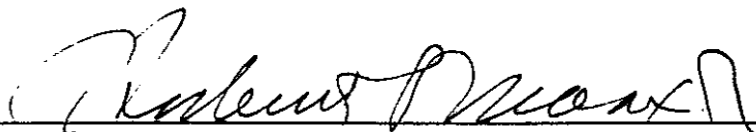
From the record, it appears that the Claimant gave some notice of his absence on April 24-25 but that he clearly was not granted permission for such absence. He failed to provide later supporting data as to the reason for his absence. The absence on May 13, 1990, was for a scheduled overtime day and again was without advance permission or appropriate justification.

The Board finds that there may have been circumstances to explain but not excuse the cited absences. Coming immediately following previous disciplinary penalty for the same offense, the Claimant should have been aware of the risk in his failure to protect his assignment. The Board has already determined that dismissal from service was unduly harsh. There is full support, however, for the intervening time between his dismissal and reinstatement to serve as an extended disciplinary suspension, to be retained on his record as a guide to the necessity for the Claimant to meet all requirements

of his position in order to retain his employment relationship with the Carrier.

FINAL AWARD

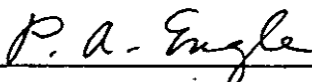
Claim sustained to the extent that the Claimant has been offered reinstatement to his former position with seniority unimpaired, as provided in the Interim Award. Claim for back pay or retroactive benefits is denied.



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



B. A. WINTER, Employee Member



P. A. ENGLE, Carrier Member

NEW YORK, NY

DATED: May 16, 1991