

**BEFORE
PUBLIC LAW BOARD NO. 6054**

IN THE MATTER OF THE ARBITRATION BETWEEN:

**THE NATIONAL RAILROAD PASSENGER
CORPORATION (AMTRAK)**

AND

**THE BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYES**

)
) **AWARD NO. 7**
) **CASE NO. 7**
)
)
) **Discharge of**
) **Henry Gutierrez**

CLAIM:

1. The dismissal of Laborer Henry Gutierrez for his alleged unauthorized absences on March 6, 11, 14, 18, 19 and 20, 2002 was without just and sufficient cause and excessive punishment.
2. Laborer Henry Gutierrez shall now be reinstated to service with seniority and all other rights unimpaired, compensated for all wage loss suffered and have his record cleared of this incident.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds that the parties herein are both the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated August 5, 1997, and has jurisdiction over the parties and the subject matter.

According to the record, Grievant entered the Carrier's service on August 8, 2000, and was employed as a Trackman at the time giving rise to this case. The record also shows that, in March, 2002, Grievant left work early on four occasions, and has been absent without permission from March 18, 2002, through the date of our hearing on June 26, 2003.

He was charged with being absent without authority and, after several postponements, a formal Investigation was held on May 16, 2002. The Grievant did not attend the Investigation, apparently because he was incarcerated in the State Prison, and it was conducted in absentia. Grievant was dismissed as the result of that Investigation.


The record establishes that Grievant did leave work early, without permission, on the four dates specified in the charges, and did not report for work on March 18 or 19, 2002. It also shows that the only contact made by Grievant during or subsequent to that period was a telephone call to the Foreman's answering machine, advising that he was being incarcerated for one year. The message also advised that a letter would follow, and Grievant's wife would call periodically to keep the Company informed. Neither a letter nor subsequent telephone calls were received.

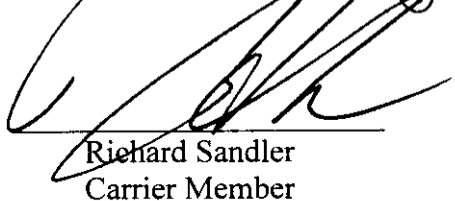
Although the Union raised several arguments in defense of Grievant's position, the record is clear that he left work early and was absent without permission on several occasions. Given his short length of service - less than two years -- there is no basis to overturn Carrier's decision to discharge the Grievant.

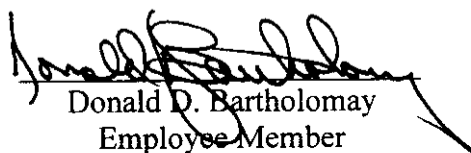
We will deny the claim.

AWARD:

Claim denied.


James R. Johnson
Neutral Member


Richard Sandler
Carrier Member


Donald D. Bartholomay
Employee Member

Dated: 7/29/03