

Award No. 14
Case No. 15

Special Board of Adjustment No. 956

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
New Jersey Transit Rail Operations Inc.

STATEMENT
OF
CLAIM:

The dismissal of Trackman Larry Height was excessive, arbitrary and capricious. He should be restored to service with seniority and all other rights unimpaired and compensated for all wage loss suffered as a result of the dismissal.

FINDINGS:

Claimant was dismissed on June 19, 1984 for excessive absenteeism.

The record establishes that he had been absent to an unreasonable extent in 1983 and through April 2, 1984. For that absenteeism, he was suspended for five days in 1983, ten days on two occasions, March 27 and April 3, 1984, and 30 days on April 19, 1984.

It may well be that Carrier was extremely patient in those instances and afforded claimant due opportunity to improve his attendance. Certainly, massive absenteeism, whatever its cause, is a basis for heavy discipline and even dismissal. An employer cannot validly be required to retain any person in its employ who is not available for steady service.

Carrier did not elect to dismiss claimant on those occasions, but instead waited until June 19, 1985 to take that extreme disciplinary action against claimant. By that time, however, claimant's attendance had shown marked improvement. From April 2, 1984 until his dismissal, no more than two absences could be charged against him.

It clearly was error for Carrier to move to dismiss claimant on the basis of prior absenteeism for which he had already been disciplined, and two additional absences over a period of more than two months. We are not suggesting that the two days of absence do not call for discipline when the earlier record is taken into consideration. Our holding is that dismissal is excessive in these circumstances.

Carrier will be directed to return claimant to its service with seniority rights unimpaired. The claim will be denied in all other respects. Claimant is warned to use this opportunity to show that he can be relied on for conscientious service.

AWARD: Claimant reinstated with seniority rights unimpaired but without back pay. To be effective within 30 days.

Adopted at Newark, N. J., 11/19/ 1985.



Harold M. Weston, Chairman



Carrier Member



Employee Member

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