

SPECIAL BOARD OF ADJUSTMENT NO. 956

BROTHERHOOD OF MAINTENANCE	)	
OF WAY EMPLOYES	)	
	)	AWARD NO. 141
and	)	CASE NO. 141
	)	
NEW JERSEY TRANSIT RAIL	)	
OPERATIONS, INC.	)	

STATEMENT OF CLAIM:

The Organization requests that the discipline (30-day suspension) assessed to Mr. L. Washington be expunged from his record, and that he be made whole for all financial losses suffered in connection with this discipline.

FINDINGS:

Special Board of Adjustment No. 956, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employes within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

Claimant entered Carrier's service on May 19, 1999 and is assigned as a Trackman. On October 23, 2006, he was instructed to report for hearing in connection with the charge that he left his assigned duties without permission or notification to the proper authority on October 10, 2006 and, in addition, failed to cover his assignment on October 11, 2006. A hearing in the matter was held on December 13, 2006, after which time the Claimant was issued a twenty day actual suspension. The discipline activated a ten day deferred suspension, for a total of thirty days.

Substantial evidence supports the Carrier's determination that the Claimant was guilty of the charges. The record shows that the Claimant exited the property during his tour of duty on October 10, 2006 without failing to notify supervision. Claimant admitted in his testimony, "I didn't have time to be running over there to tell nobody so I just left." Claimant had been issued prior discipline for precisely this same offense, so it is entirely reasonable to conclude that he knew of the importance of notifying supervision and obtaining permission before leaving the property. He failed to do so.

In addition, the record established that the Claimant failed to protect his assignment on October 11, 2006. The Organization contends that there were extenuating circumstances which should have been considered by the Carrier before rushing to impose discipline. Claimant had a court date and he notified supervision in advance. Carrier's rigid adherence to its absenteeism policy in the face of a legitimate excuse is arbitrary and unreasonable, the Organization asserts.

The Board does not find the argument persuasive in this particular instance. Excessive absenteeism, even for legitimate reasons, need not be tolerated indefinitely by the Carrier. Under the Carrier's attendance policy, employees are expected to cover their bulletined job assignments. Carrier correctly points out that employees have personal days and other leave to cover an absence if the need arises.

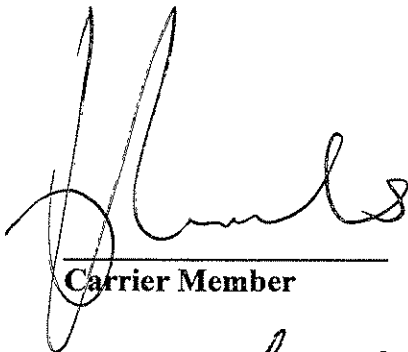
The Carrier asserts that the discipline imposed was fair in light of the violations of the attendance policy. When proper cause for discipline is established, prior absences and discipline can properly be considered in assessing the appropriate measure of discipline. We agree. Claimant's proven misconduct, particularly when viewed in light of his work record, shows an employee who has developed a pattern of absenteeism that is inconsistent with the Carrier's attendance policy and its expectation that employees report for work on a regular basis.

There is one remaining issue to be addressed and it pertains to the weight of the argument relating to disparate treatment so strongly pressed by the Organization. It is argued that in disciplining the Claimant, the Carrier treated him differently and more harshly than employees in similar circumstances. However, such a claim is an affirmative defense for which the Organization must shoulder the burden of proof. The evidence presented on this record merely shows that two employees who were charged with leaving the property without proper notification were permitted to sign waivers. There was no evidence that either employee had as poor an attendance record as the Claimant's or that the employees stood at the same step as the Claimant on the progressive discipline ladder. Therefore, it must be concluded that the Union has not proved disparate treatment in the case at hand.

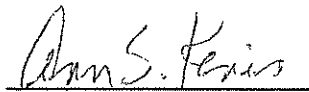
Under all the circumstances, the discipline imposed was not arbitrary or unreasonable. On the contrary, the Board finds that the discipline was appropriate in light of the Claimant's decision to leave the work place on October 10, 2006, without notice or authorization. His misconduct was compounded by his demonstrated failure to protect his assignment on October 11, 2006. He has a long history of prior discipline for similar offenses. The claim shall therefore be denied.

AWARD

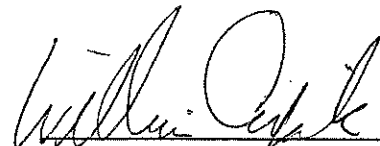
Claim denied.



Carrier Member



ANN S. KENIS
Neutral Member



Organization Member

Dated this 3rd day of June, 2008.