

## SPECIAL BOARD OF ADJUSTMENT NO. 956

|                            |   |               |
|----------------------------|---|---------------|
| BROTHERHOOD OF MAINTENANCE | ) |               |
| OF WAY EMPLOYES            | ) |               |
|                            | ) | AWARD NO. 145 |
| and                        | ) | CASE NO. 145  |
|                            | ) |               |
| NEW JERSEY TRANSIT RAIL    | ) |               |
| OPERATIONS, INC.           | ) |               |

### STATEMENT OF CLAIM:

The Organization requests that the discipline (30-day suspension) assessed to Mr. J. Oliva 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.

There is no dispute about the facts giving rise to this claim. The Claimant failed to work his entire tour of duty on February 16 and April 2, 2007. On April 4, 2007, he did not present himself for work. He was charged with being absent without permission and violating the terms of Carrier's attendance policy. A hearing on the matter was held on May 22, 2007. Subsequently, Claimant was issued a thirty-day suspension.

Carrier contends that there is no basis to disturb the discipline assessed in the instant case. Carrier argues that it expects and must have employees come to work on a consistent and regular basis. The Carrier cannot operate efficiently if it cannot depend on its workforce to report for work.

In the instant case, the Carrier argues that the Claimant has a record of corrective discipline for attendance infractions. After chronicling Claimant's history of absenteeism, Carrier points out that he has been counseled, warned and disciplined on multiple occasions. Regardless of the legitimacy of the Claimant's reasons for being tardy, not reporting for work and leaving early, Carrier maintains that it has the right to enforce its expectation of regular attendance consistent with the attendance policy. Given the circumstances, Carrier argues that a thirty-day suspension was an appropriate measure of discipline and hardly constitutes an abuse of discretion under these facts.

The Organization argues that there were bona fide reasons for the Claimant's attendance difficulties. Transportation issues and family emergencies were the reasons cited by the Claimant. On April 4, 2007, Claimant stated that he did telephone a co-worker to advise that he would not be reporting for work. In the Organization's view, the Carrier abused its discretion when it failed to recognize that there were extenuating circumstances beyond the Claimant's control which prevented him from protecting his job assignment.

After careful review of the record in its entirety, we find that substantial evidence exists to support the discipline imposed. Under the Carrier's attendance policy, employees are expected to cover their bulletined job assignments. This is necessary in order for the Carrier to provide reliable and efficient service. The status of any employee whose performance is impaired because of continued absence is evaluated under the policy, consistent with individual circumstances and the employee's job performance record.

As established in many awards throughout this industry, the legitimacy of one of more absences does not necessarily relieve the employee of a charge of an unsatisfactory record of attendance over an extended period. Claimant admitted that he understood the application of the attendance policy when he testified:

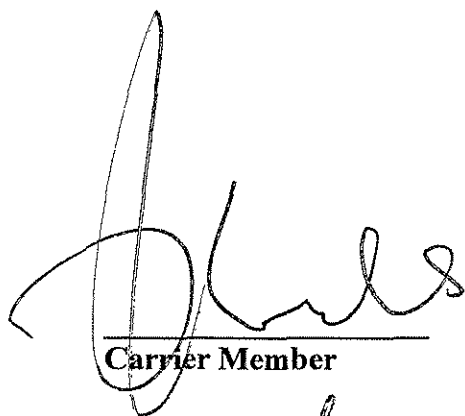
...Unfortunately what's here it's pretty cut and dry, it's in black and white and it's all true. I mean I have reasons for why this happened but unfortunately like you said the policy is really cut and dry and I can't deny any of it. I just hope that I can have some leniency and hope that they take my testimony from before can be taken into account my reasons and I hope that I get some sort of leniency but I have to go with what has to transpire.

The record in the instant case shows that the Claimant has been verbally counseled, warned and disciplined on multiple occasions for violations of the attendance policy. Clearly, the Claimant has amassed an unsatisfactory record of attendance. The Board finds that the Carrier acted reasonably and within its authority to enforce attendance standards and that the resulting disciplinary penalty was fully appropriate and consistent with the tenets of progressive discipline.

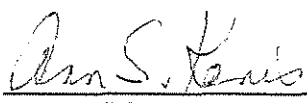
Finally, leniency is the prerogative of the Carrier, not the Board. We have no authority to extend leniency. Based on the proven charges and the Claimant's overall attendance record, we have no alternative but to deny the claim.

AWARD

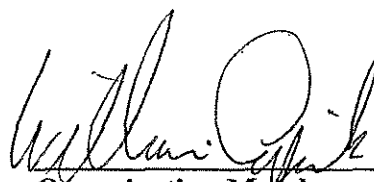
Claim denied.



Carrier Member



ANN S. KENIS  
Neutral Member



Organization Member

Dated this 3<sup>rd</sup> day of June, 2008.