

## **SPECIAL BOARD OF ADJUSTMENT NO. 956**

<b>BROTHERHOOD OF MAINTENANCE</b>	)	
<b>OF WAY EMPLOYEES</b>	)	
	)	<b>AWARD NO. 146</b>
<b>and</b>	)	<b>CASE NO. 146</b>
	)	
<b>NEW JERSEY TRANSIT RAIL</b>	)	
<b>OPERATIONS, INC.</b>	)	

### **STATEMENT OF CLAIM:**

The dismissal of J. Oliva was excessive and unwarranted. The Organization requests J. Oliva be returned to service, 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 Employee 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 September 5, 2001 and was assigned as a Trackman. On August 13, 2007, he was instructed to report for hearing in connection with the charge that he failed to cover his assignment on July 18, 2007. A hearing in the matter was held on August 29, 2007, after which time the Claimant was discharged.

The Organization protested the discipline. It argued that the Claimant's absence on July 18, 2007 was unavoidable because the babysitter who cared for the Claimant's son lost electricity and notified him that the child had to be picked up. The Organization further argues that while there may be occasions when an employee can use a personal day or vacation time to cover an absence, those types of leave days must be scheduled in advance and are not permitted on an emergency basis. In the Organization's view, some consideration must be given to exigencies which arise. Absent that consideration, the imposition of discharge was overly harsh and unwarranted.

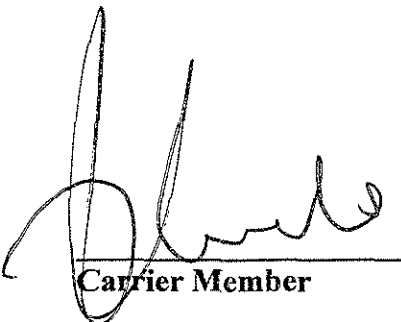
The Board has carefully considered the Organization's position and the factual predicate in this case. We find that substantial evidence supports the Carrier's determination that the Claimant was guilty of the charges. The real crux of this dispute is whether the Carrier acted in an arbitrary, unreasonable or capricious manner when it determined that discharge was the appropriate penalty to be meted out to the Claimant.

As we have emphasized in other awards of this Board, 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. In the case of the Claimant, it must be noted that he was disciplined on eight prior occasions over a two year period for attendance infractions. The Carrier utilized corrective discipline in an attempt to impress upon the Claimant that he had to be regular in his attendance. Claimant was aware that his job was in jeopardy and he had to get his life in order and come to work. Unfortunately for the Claimant, his attendance record did not improve.

It is important to point out that it was not a single absence that placed the Claimant at the point of discharge. It was the accumulation of absences which ultimately caused the Carrier to conclude that there was an entrenched pattern of irregular attendance. Regardless of the various reasons, Claimant was a chronic absentee. Given the overall record, and his relatively short length of service, we cannot say that the Carrier's decision to discharge was arbitrary or that there exists a proper basis for the Board to interfere with the Carrier's decision. The claim shall therefore be denied.

AWARD

Claim denied.



Carrier Member



ANN S. KENIS  
Neutral Member



Organization Member

Dated this 30th day of June, 2008.