

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 B & B Mechanic B. Miller was without just and sufficient cause. He shall be reinstated without loss of compensation, seniority or vacation rights, or any of the other benefits that were enjoyed by claimant prior to his dismissal.

FINDINGS:

Claimant was absent from his position without permission on Friday, January 10, 1986. At 8:40 a.m., 40 minutes after his scheduled starting time, claimant's girlfriend communicated with the office by telephone and asked that a personal day be given to claimant.

On the basis of these facts, considered in the light of claimant's prior record and a waiver signed by him on November 25, 1985, claimant was found guilty of excessive absenteeism and dismissed from Carrier's service. Carrier points out that Rule 36-b-1 provides as follows:

"Personal leave days provided in Section (a) may be taken upon 48 hours advance notice from the employee to the proper agency officer provided, however, such days may be taken only when consistent with the requirements of the agency's service...."

We are satisfied that disciplinary action is warranted, even in the absence of any consideration of claimant's prior record and the waiver mentioned by Carrier.. A fundamental obligation of every employe, particularly in the railroad industry where time schedules are so critical, is to be available to protect his assignment.

In determining the measure of discipline, it was appropriate for Carrier to take claimant's service record into consideration. It shows that he had been suspended in 1983 for sleeping on duty and twice in 1984 for absenteeism in January, February, March, April and October 1984, he had thereafter been given a first notice of absenteeism for January 14, 21 and 25, 1985 and a second notice for February 8, 13 and 21, 1985 absences.

Claimant's record also shows that on November 25, 1985, he agreed to waive the right to an investigation in connection with the first and second notices just mentioned and failure to cover his assignment on May 9 and 31 as well as July 12 and 31 and August 1, 14, 15 and 18, 1985. Under the terms of the waiver, claimant agreed to a rehabilitation period, in which he would seek counseling, lasting until January 1, 1986. The waiver agreement goes on to provide the following:

"At that time, you will be agreeable to accepting immediate dismissal, which is final and binding with no right of appeal if my work with regard to performance, safety and attendance is not immediately brought up to NJTRO standards; specifically no injuries because of rule violations, no tardiness, no absenteeism and efficient and productive work practices. This waiver for dismissal is to stay in place for one year from January 1, 1986."

Claimant's one-day absence, considered in the context of his entire record, provides a sound basis for heavy discipline. These circumstances do not warrant such extreme disciplinary action as dismissal, even when proper weight is given to claimant's waiver. The absence on January 10, 1986, in and of itself, did not establish "absenteeism" and call for his dismissal.

Claimant must be afforded additional opportunity to demonstrate that subsequent to January 1, 1986, his work in regard to "performance, safety and attendance" has been brought up to NJTRO standards. He will be reinstated with seniority rights unimpaired, but without back pay; the resulting long suspension without pay will emphasize the gravity of his offense and the importance of prompt improvement in his attendance.

AWARD: Claimant reinstated without back pay. To be effective within 30 days.

Adopted at Newark, N.J. *July 1,* 1987.


Harold M. Weston, Chairman


Carrier Member


Employee Member