

AWARD NO. 66
CASE NO. 66

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

Claim of the Brotherhood:

The dismissal of Claimant S. Hameed was arbitrary and capricious and an abuse of Carrier's discretion, and as a result, the Claimant's record shall be expunged of all charges related to this incident and the dismissal be rescinded and he be returned to work and made whole for all lost wages and benefits.

FINDINGS

Claimant S. Hameed was a trackman with this Carrier with a seniority date of April 21, 1987. Claimant was absent on July 5, 8, 11, 15, 1988. Prior to said infraction, Claimant had been sent two warning notices for his unsatisfactory attendance pattern. As a result, Claimant was charged with and found guilty of excessive absenteeism and absenting himself without permission when he failed to cover his assignment on the aforementioned dates.

The discipline of dismissal from all service was assessed to Claimant for his actions, and by letter dated August 15, 1988, both the Claimant and the Organization were notified of the assessed discipline.

The Carrier maintains that it acted properly in this case. The record shows that the Claimant was absent without permission on July 5, 8, 11 and 15 and that the Claimant himself admitted that he did not request permission to be absent on said dates.

In addition, the record shows that Claimant exhibited a pattern of absenteeism which can clearly be classified as "excessive".

The Organization has forcibly argued that the Claimant's right to be absent was supported by his supplying the Carrier with a doctor's note for his July 5 and 15 absences. However, Claimant was absent without permission for four days. His production of a doctor's note, after being absent on these days has not mitigated the circumstances in this case. In fact, a review of Claimant Hameed's past attendance record reveals that the Claimant, in his short tenure with this Carrier of approximately 1 year and 4 months, was absent from his assignment a total of 36 days.

Because of Claimant's proven inability to modify his unsatisfactory behavior, the Carrier also maintains that the discipline assessed in this case was fully warranted. The evidence of record shows that Claimant was habitually absent and that that Claimant was given ample opportunity to correct his unacceptable behavior. He received two warning letters and two previous disciplines. Notwithstanding, Claimant failed to modify his unacceptable behavior. Clearly, the Carrier has the right to sever the employment relationship with such employees.

The Board finds that the Claimant was granted his contractual and procedural rights under the agreement, and after due consideration of the record, we can find no valid basis for setting aside the Carrier's decision to dismiss this employee.

AWARD: Claim denied.

Adopted at Newark, New Jersey, ⁹⁰January 10, 1989.


Harold M. Weston, Chairman


Carrier Member


Employee Member