

SPECIAL BOARD OF ADJUSTMENT NO. 957

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

"CARRIER"

and

BROTHERHOOD OF MAINTENANCE
OF WAY EMPLOYEES

"ORGANIZATION"

Award No. 13

STATEMENT OF CLAIM:

Claim of the Brotherhood (BMWE-86-16-F12) that:

The dismissal of General Track Helper Leonard Nicholson was arbitrary and capricious on unknown and disproven charges.

REMEDY:

The Claimant shall be reinstated without loss of compensation and without loss of seniority and other contractual benefits and privileges the Claimant enjoyed prior to his dismissal.

OPINION OF THE BOARD

Claimant, L. Nicholson, was discharged on June 2, 1986 for substandard attendance. The Organization seeks his reinstatement without loss of compensation.

The arbitration hearing in his matter took place on September 21, 1987. Claimant was present and represented by the Organization.

The basic facts are not in dispute. Claimant had a long record of substandard attendance. He received repeated discipline for lateness, including warnings and suspensions. On May 23, 1986, the Grievant received a five-day suspension and final caution for lateness. On May 27, 28 and 29, 1986, Grievant called in sick for work. Despite Claimant giving proper notification of this absence and submitting a doctor's note, Carrier terminated him for substandard attendance upon his return to work.

Carrier maintains that in view of Claimant's repeated attendance violations, which clearly violated Carrier Work Rules, and the prior progressive discipline he received, Claimant's discharge was proper. The Organization contends that as Claimant properly verified his absence on May 27, 28 and 29, Claimant committed no offense that could justify his termination or any form of discipline on June 2.

Carrier Work Rules, cited by the parties, state:

23. Late/Missing

Any unexcused employee who fails to report fully prepared to work at his regular starting time at his assigned work area, but who reports before the finishing time of his regular days work at his assigned work area, shall be classified as late/missing and will be subject to disciplinary action.

25. Patterns of Sick Turnins

Patterns of sick turnins will be closely observed, such as weekend turnins or turnins in conjunction with an employee's days off, etc. Establishing patterns of this type will result in disciplinary action.

30. Substandard Attendance Record

Employees having compiled substandard attendance records which cumulatively include all sick turnins, patterned illnesses, latenesses and any other attendance related offenses are subject to disciplinary action up to and including discharge.

The Board has determined that the claim must be sustained in part, and the Claimant reinstated to his former position without back pay.

The Board finds that discipline of the Claimant was appropriate on June 2, 1986. Claimant had a long record of substandard attendance. Notwithstanding this extremely poor record, he was again not at work as scheduled on May 27, 28 and 29. Although Claimant did indeed submit a doctor's note for this absence, an employee with an attendance record as poor as Claimant's cannot forever be shielded from discipline by submitting a doctor's note. At some point, an employee's attendance record becomes so poor that Carrier can take disciplinary action for substandard attendance even after submission of a doctor's note. Claimant's record placed him at that point. His absence on May 27, 28 and 29 could therefore properly trigger discipline, and Claimant was not, as the Organization maintains, solely disciplined because of his prior record.


The Board further finds, however, that Claimant's discharge was not proper. While it is true that Claimant had received prior progressive discipline, all that discipline was for lateness. The Claimant's absence on May 27, 28 and 29 was absenteeism, not lateness. While it is true, as the Carrier argues, that both absenteeism and lateness are attendance-related violations, they are not identical offenses. Where, as here, all of Claimant's prior discipline was for lateness, discharge is not appropriate for a triggering incident of absenteeism.

In these circumstances, the proper outcome of this case is that the Claimant be reinstated without back pay. Although discharge was not proper, back pay would be inappropriate in light of Claimant's

poor record. Claimant must further understand that he cannot in the future expect the Organization to rescue him again if he himself is unwilling to maintain regular and good attendance.

AWARD


Claim sustained in part. Carrier shall reinstate Claimant with full seniority, but without back pay or other benefits lost because of his discharge.



R. B. BIRNBRAUER
Carrier Member



W. E. LaRUE
Organization Member



S. E. BUCHHEIT
Neutral Member