

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 100

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: National Railroad Passenger Corporation (AMTRAK) -
Northeast Corridor

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood
that:

1. The dismissal of Mr. L. Hayes for allegedly being excessively absent, in that you were absent in whole or in part on November 10, 11, 15, 16, and 17 and December 1, 1988, was without just and sufficient cause and in violation of the Agreement (System File NEC-BMWE-SD-2388D).
2. The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant L. Hayes was employed as a trackman by Carrier. On December 5, 1988 Claimant was instructed to attend a hearing in connection with the following charge:

"You have been excessively absent, in that you were absent in whole or in part on the following dates:
November 10, 11, 15, 16, 17 and December 1, 1988".

The hearing was held on December 27, 1988, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf challenging his dismissal.

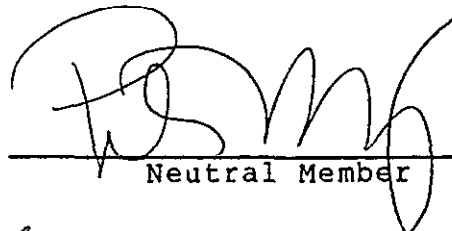
This Board has reviewed the evidence and testimony in the case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of being excessively absent during the period November 10 through December 1, 1988. He missed work on seven days within that short period of time. This Carrier defines excessive absenteeism to be three or more days within a 30 day period.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find that action to have been unreasonable, arbitrary or capricious.


In the case at hand the claimant, despite his lengthy seniority, had clearly received progressive discipline leading up to his dismissal. The record reveals that he was counselled in August of 1988, warned in September of 1988, received a ten day suspension in October of 1988, and a 30 day suspension in November of 1988. All of that progressive discipline apparently did not have any effect on the Claimant. At some point, a Carrier has a right to decide that an employee who cannot show up for work can be discharged. This carrier did not act unreasonably, arbitrarily or capriciously, in making that determination. Therefore, the claim must be denied.

AWARD

Claim denied.



Neutral Member



Carrier Member

Date: 10-17-89



Organization Member