

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 11

Docket No. NEC-BMWE-SD-1379D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On August 15, 1985, Carrier notified Claimant M. Allen that a hearing would be held on charges that Claimant had been excessively absent from duty. After two postponements, the hearing was held on September 19, 1985. As a result of the hearing, Claimant was found guilty of the charge and dismissed from service.

The Organization challenges the timeliness of the charge against Claimant. The notice of investigation issued on August 15, 1985, included absences from May and July 1985. The Organization points out that under Rule 71(a), a trial must be scheduled within 30 days from the date that the Division Engineer has knowledge of an alleged violation. Carrier witnesses admitted that attendance records are available within one day after each event. The Organization contends that Carrier's explanation for the delay in charging Claimant is not sufficient reason to waive Rule 71(a)'s requirements.

The Organization further argues that Carrier was unable to specify the elements of "excessive absenteeism," nor could it state how "excessive absenteeism" is measured. The Organization asserts it is axiomatic that an employee must know the elements of the charge against him so that he may prepare a defense. The Organization contends that because Carrier could not articulate an absenteeism policy, Carrier was precluded from imposing discipline on Claimant. Moreover, the Organization argues that Claimant is not guilty of the

charge. At the hearing, Claimant presented a note documenting a medical reason for his absence; Carrier did not dispute this evidence. The Organization therefore argues that the claim should be sustained.

The Carrier contends that Claimant admitted his absence on the dates cited in the charge; this admission is supported by Carrier's attendance records. Moreover, Claimant's assertion that he called off on those dates is unpersuasive. Carrier argues that even if Claimant had properly called off, the admitted absences still are excessive. Further, there is no proof that Claimant's alleged illness prevented Claimant from working on any of the cited dates.

Carrier also contends that a charge of excessive absenteeism requires a review of attendance records for a long period of time; Carrier was not obligated to separately charge Claimant for each month's absences. Moreover, the charge was timely from the date of Claimant's last absence in the pattern of excessive absenteeism.

Carrier finally argues that the assessed discipline was neither excessive nor an abuse of managerial discretion. The Carrier points out that Adjustment Boards long have held that excessive absenteeism is a serious offense that merits dismissal, especially if the employee's past record includes similar offenses. The Carrier asserts that Claimant had a poor service record, including past progressive discipline and a prior dismissal for absenteeism; Claimant was reinstated on a leniency basis. The Carrier therefore contends that the claim should be denied in its entirety.

This Board has reviewed the evidence and testimony in this case, and we find that there is no merit to the procedural issue raised by the Organization. By its very nature, excessive absenteeism is a

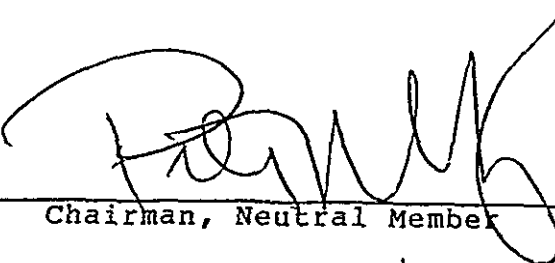
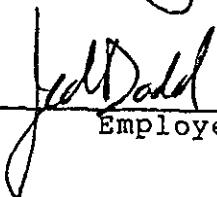
cumulative offense; and, thereby, absences prior to 30 days from the date of the notice of investigation are eligible to be included in the charge of excessive absenteeism. In this case, the Claimant was charged with absenteeism, including nine days in May, five days in July, and four days in August. The last day in August, August 15, 1985, was the actual date that the Carrier issued its notice of hearing. Hence, there was no violation of Rule 71(a).

With respect to the substantive charge of excessive absenteeism, Claimant admits his absences on the dates in question; and those admissions are supported by the evidence. Although the Claimant contends that he had justifiable reasons to be off on the days in question, this Board has found, on many occasions in the past, that, irrespective of the reasons, a carrier can impose discipline for excessive absenteeism if a claimant's time off has become too extensive.

Once this Board finds that a claimant is guilty of the violations with which he is charged, we turn our attention to the type of discipline imposed. In the case at hand, Claimant has been counseled with respect to absenteeism on two occasions, received a letter of warning, and received a suspension. The Carrier has engaged in progressive discipline of this Claimant, but he remains unwilling or unable to comply with the Carrier's rules regarding regular attendance. Consequently, this Board finds that the Carrier's action in terminating the Claimant was not unreasonable, arbitrary, or capricious. Therefore, the claim will be denied.

Award:

Claim denied.


Chairman, Neutral Member
Carrier Member
Employee MemberDate: 3-25-87