

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 110

Docket No. NEC-BMWE-SD-2399D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

DISPUTE: Claim of the Organization that:

- 1) Claimant never received the mandatory warning letter;
- 2) The ten working days suspension is not a rehabilitation type of discipline for two days of absenteeism.
- 3) This matter should be expunged from the claimant's record and the claimant should be compensated for any wage loss he has suffered.

FINDINGS:

Claimant D. L. Ruby was employed as a trackman by Carrier.

Claimant was notified by letter to appear for a trial in connection with the following charge:

"Violation of Agreement by and between the National Railroad Passenger Corporation and the Employees represented by Brotherhood of Maintenance of Way Employees, dated October 26, 1976, Paragraph 2." When you were absent from work without permission on the following dates:

July, 1988 - 26

August, 1988 - 2, 9, 10

The trial was held on January 9 and January 24, 1989, and as a result Claimant was assessed discipline of ten (10) working days suspension. The Organization thereafter filed a claim on Claimant's behalf challenging his discipline.

This Board has thoroughly reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of unauthorized absence on the dates in question. Although the Claimant initially maintained that he was absent from work on the days in order to drive

his wife to the hospital, and the hearing was recessed to allow him to document that, he subsequently admitted that that was not the case and he could not remember the reason for his absences on those dates. Therefore, without any sufficient explanation, it is clear that he was guilty of unauthorized absence on the dates in question.

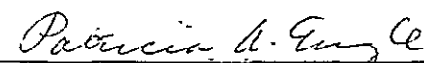
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find the carrier's action to have been unreasonable,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

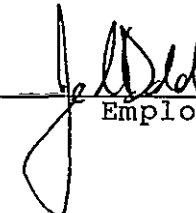
In the case at hand, the discipline of the Claimant is governed by the Unauthorized Absenteeism Agreement which calls for a ten (10) days suspension for a second offense. Although the Claimant has stated that he did not receive the earlier written warning, there was testimony from a supervisor that he had hand delivered the written warning to the Claimant on June 30, 1988. Since this was a second offense, the Carrier acted within its rights when it issued the Claimant a ten day suspension.

Award:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: 2/22/90