

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)

Case No. 125

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The ten (10) calendar day suspension issued Claimant Durant W. Gaskins on July 14, 1989, was excessive.
2. The Carrier violated Rules 68 and 71 of the collective bargaining agreement and that the Carrier failed to meet the required burden of proof to sustain the charges against the Claimant.
3. The Claimant should be immediately exonerated of said charges and his record should be expunged concerning this matter.

FINDINGS:

Claimant Durant W. Gaskins was employed by the Carrier as a machine operator.

On April 14, 1989, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charge:

Violation of Amtrak's Excessive Absenteeism Policy

Specification: In that you were excessively absent in whole or in part between March 23, 1989, and April 3, 1989, specifically on the following dates: March 23, 1989; March 28, 1989; March 30, 1989; and April 3, 1989.

In light of your previous attendance record, this constitutes excessive absenteeism.

After three postponements, the hearing took place on July 3, 1989. The Claimant was not present but was represented by an Organization representative. On July 14, 1989, the Carrier

notified the Claimant that he had been found guilty of the charges against him for all days charged, with the exception of March 30, 1989, and was being assessed discipline of ten calendar days' suspension as of July 17, 1989.

In or about August 1989, the Claimant filed an appeal of the discipline imposed upon him, which was later denied by the Carrier. On October 27, 1989, the Organization filed a claim on the Claimant's behalf, contending that the Carrier violated Rules 68 and 71 of the collective bargaining agreement and that the Carrier failed to meet the required burden of proof to sustain the charges against the Claimant. The Carrier thereafter reaffirmed its decision on the basis that it had the right to discipline the Claimant because of his chronic absences from work. The parties being unable to resolve the issues, this matter came before this Board.

This Board has reviewed the procedural arguments raised by the Organization and we find them to be without merit. The Claimant was aware of the charges against him and he received notice of the hearing. Claimant chose not to attend the hearing but was adequately represented and received a fair hearing.


This Board has 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 being excessively absent in whole or in part on three separate occasions between March 23, 1989 and April 3, 1989. The Carrier considers three occasions to be excessive absenteeism and this Board has upheld that position on numerous occasions.

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 its action to have been unreasonable, arbitrary or capricious.

The record of the Claimant in this case reveals that he had previously received a letter of warning and a 5-day suspension held in abeyance for excessive absenteeism. Pursuant to the Carrier's policy, the next disciplinary step on the attendance ladder is a 10-day suspension. This Board cannot find anything unreasonable or improper about the Carrier's issuance of the 10-day suspension to the Claimant in this case. Therefore, the claim will be denied.

AWARD


Claim denied.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



John D. Hall
Organization Member

Date: 8-8-91