

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 138

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

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

1. The dismissal of Maintenance of Way Repairman F. E. Beinlich for alleged excessive absenteeism was harsh, arbitrary, capricious, without just cause, and in violation of the Agreement.
2. The Claimant shall be reinstated with seniority and all other rights unimpaired, his record cleared of the charge leveled against him, and be compensated for all wage loss suffered.

FINDINGS:

Claimant F. E. Beinlich was employed by the Carrier as an M/W repairman.

On April 12, 1990, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

Violation of Amtrak Bear Complex excessive absenteeism and General Rules of Conduct Rule O which reads in part: Employees must report for duty at the designated time and place and must attend to their duties during assigned working hours.

Specifications: In that on the following days you were absent in whole or in part: March 8, 1990; March 19, 1990; and March 30, 1990. In view of your past record this constitutes excessive absenteeism.

After two postponements, the hearing took place on June 14, 1990. On June 22, 1990, the Carrier notified the Claimant that he would be terminated effective effective June 25, 1990.

The Organization thereafter filed a claim on the Claimant's behalf, challenging his dismissal. The Carrier subsequently denied the claim.

The parties being unable to resolve the issues, this matter came before this Board.

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 excessive absenteeism when he was absent on March 8, March 19, and March 30, 1990. This Board has held on numerous occasions in the past that the Carrier is not unreasonable when it considers an employee's being absent for three days within a thirty-day period to be excessive absenteeism.

This Board rejects the Organization's contention that since the charges were not brought within thirty days after the initial instance of absenteeism, that the Claimant was denied his procedural rights. This Board has also held on numerous occasions in the past that as long as the hearing is held within thirty days of the last date of the alleged excessive absenteeism the Carrier has complied with the rules.


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 be unreasonable, arbitrary, or capricious.

In the case at hand, the record reveals that the Claimant had worked for the Carrier for approximately one year and eight

months prior to the incident. In that short period of time, he had received several letters of warnings relating to attendance as well as a two-day suspension, a four-day suspension, and a five-day suspension for excessive absenteeism. Since the Claimant has been unable to bring his attendance into line with the Carrier requirements after all that discipline, this Board cannot find that the action taken by the Carrier was unreasonable, arbitrary or capricious. Therefore, the claim will be denied.

AWARD

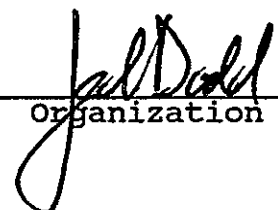
Claim denied.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



J. D. Dadd
Organization Member

Dated: 1-15-92