

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

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

Case No. 139

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

1. The dismissal of Trackman T. N. Coulson for alleged excessive absenteeism was harsh, arbitrary, capricious, without just cause and in violation of the Agreement (System File NEC-BMWE-SD-2714D).
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 Terry N. Coulson was employed by the Carrier as a trackman at its Bear, Delaware, facility.

On August 15, 1990, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

Violation of NRPC Rules of Conduct, Rule O.

Specifically: You have been absent from your assigned duties in part or in whole on the following dates:

Sick-No Pay	7/30/90	7.00	3.00	8.00
Sick-No Pay	7/27/90	7.00	3.00	8.00
Unauth	7/26/90	7.00	3.00	8.00
Early Quit	7/24/90	9.55	3.00	5.05
Sick-No Pay	7/23/90	7.00	3.00	8.00
Sick-No Pay	7/20/90	7.00	3.00	8.00
Sick-No Pay	7/16/90	7.00	3.00	8.00
Sick-No Pay	7/12/90	7.00	3.00	8.00

Due to your past record, this constitutes excessive absenteeism.

After one postponement, the hearing took place on September 7, 1990. On September 21, 1990, the Carrier notified the Claimant that he had been found guilty of all charges, excepting that portion of the specification dealing with July 30, 1990, and was being assessed discipline of dismissal effective close of business September 21, 1990.

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

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 afforded a fair and impartial trial.

With respect to the merits of the case, 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. The record reveals that the Claimant was absent from his assigned duties in whole or in part on July 12, 16, 20, 23, 24, 26, 27, and 30 in the year 1990. This Carrier has always had a policy that three or more days of absenteeism in one month would constitute excessive absenteeism.

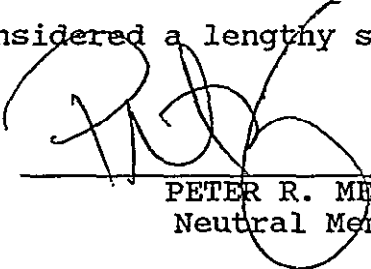
Once this Board has determined that there is sufficient evidence to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary, or capricious.


In the case at hand, the record reveals that this Claimant has been found guilty of excessive absenteeism on seven previous occasions for which he has received three letters of instruction, one verbal counseling, one counseling letter, one final warning letter, and two days of suspension. However, this Carrier has a policy where it affords an employee a final lengthy suspension, often ten days, prior to issuing discharge for excessive absenteeism. In this case, the Claimant did not receive the lengthy suspension which would have effectively put him on notice that any future excessive absenteeism would lead to his termination.

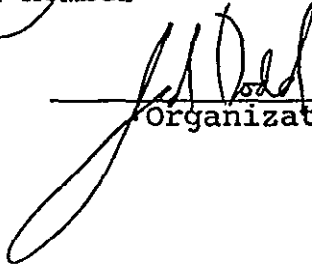
After the oral argument in this case, the neutral member of this Special Board of Adjustment issued a letter dated April 17, 1991 ordering that the Claimant be returned to work without backpay prior to May 1, 1991. It is the order of this Board that the period prior to May 1, 1991 be considered a lengthy suspension and that the Claimant shall be returned to work on a last chance basis. The Claimant should be told that since he has now been suspended for a period in excess of ten days, any future discipline pursuant to the absenteeism policy will be discharge.

AWARD

Claim sustained in part. The Claimant is to be returned to work as of May 1, 1991, but without backpay. The time off from work shall be considered a lengthy suspension.

  
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PETER R. MEYERS  
Neutral Member

  
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Patricia A. Engle  
Carrier Member

  
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J. D. Dadd  
Organization Member

Dated: 4-29-92