

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 150

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: National Railroad Passenger Corporation (AMTRAK) -
Northeast Corridor

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

1. The dismissal of Trackman J. Varnado for alleged violation of Amtrak Engineering Absenteeism Policy was harsh, arbitrary, capricious, without just cause and in violation of the Agreement (System File NEC-BMWE-SD-2931D).
2. The Claimant shall be exonerated of the charge leveled against him, reinstated to his former position and compensated for all loss suffered.

FINDINGS:

Claimant J. Varnado, a trackman assigned to Gang M772 stationed at Penn Station in New York, was dismissed from service when he allegedly violated Amtrak Engineering Excessive Absenteeism Policy. The Carrier contends that the Claimant was allegedly absent from duty in whole or in part on May 14, May 31, June 3 and June 4, 1991. It further contends that taking into consideration the Claimant's past record and short service, the Carrier had just cause to dismiss the Claimant.

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 that the Claimant was guilty of his fourth instance of excessive absenteeism since November of 1990. The record reveals that the

Claimant was counseled in November of 1990; he was given a letter of warning about excessive absenteeism in January of 1991; and he was assessed a ten-day suspension on February 28, 1991. Claimant served five days of the suspension and the other five were held in abeyance. The record reveals that the Claimant left early on May 14, 1990, left early on May 31, 1991, and was absent the entire day on June 4, 1991.

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 unless we find its action to have been unreasonable, arbitrary or capricious.

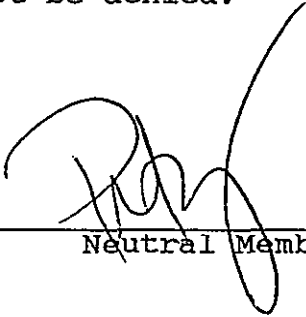
The Carrier has applied its absenteeism policy to the Claimant. This Claimant, who has compiled only one year of service, was given a formal counseling, letter of warning and additional counseling, and a ten-day suspension within that one year before his final three attendance violations in 30 days led to his termination. This Board has upheld the Carrier's absenteeism discipline program and sees no reason to make an exception in this short-term employee's case.

The Organization argues that the Claimant did not receive a fair and impartial trial, but this Board disagrees. Moreover, the Organization contends that the Claimant should not have been dismissed because he was ill. However, this Board finds, as it has done in the past, that the Carrier can dismiss employees for excessive absenteeism, irrespective of the reasons for the

absenteeism. The Carrier is running a railroad and must have some assurance that its employees are going to appear for work with some degree of regularity. In this case, this short-term employee accumulated sufficient instances of absenteeism for the Carrier to consider it excessive and justify discharge. Therefore, the claim must be denied.

AWARD

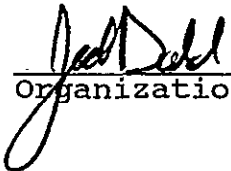
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 3/19/93