

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 17  
Docket No. NEC-BMWE-SD-1310D

PARTIES: Brotherhood of Maintenance of Way Employees  
TO :  
DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On April 17, 1985, Claimant R. Richardson was notified by Carrier to appear at a hearing in connection with the charge that he had been absent without authorization on three dates in March and April 1985, in violation of the parties' absenteeism agreement. After two postponements, the hearing was held on June 4, 1985. As a result of the hearing, Claimant received a ten-day suspension.

The Organization contends that Carrier violated Claimant's due process right to a fair and impartial hearing by failing to call a relevant witness. The Organization points out that on two of the cited dates, Claimant's foreman listed Claimant as absent with authorization on the time records, and as taking his personal holiday on the third date; these notations were later changed. The Organization argues that Claimant should have, but did not, call Claimant's foreman to corroborate its explanation of the change.

The Organization further contends that Carrier presented no evidence to show Claimant was aware of any policy requiring employees to report absences to the Track Office. Claimant testified that he understood the policy to require employees to notify either the Track Office or their foremen. Moreover, the initial notations by Claimant's foreman, showing his absences to be authorized, shows that Claimant's foreman knew the absences were for reasons considered to be legitimate under the absenteeism agreement. Carrier did not

present any evidence to rebut this presumption. The Organization therefore contends that the claim should be sustained.

The Carrier contends that its time records show Claimant was absent without authorization on the cited dates. Moreover, Claimant admitted his absences. Carrier further argues that with the exception of Claimant's assertion about his personal holiday, Claimant offered no legitimate excuse for his absences.

The Carrier also argues that the record does not support Claimant's assertion that he notified his foreman of his absences. The Carrier points out that even if Claimant did notify his foreman, Claimant's foreman does not have authority to excuse absences. As to the personal holiday, Carrier asserts that Claimant testified he was told that Carrier would not authorize the personal holiday because Claimant did not give 48 hours' notice as required by the agreement.

The Carrier additionally contends that Claimant was aware that he could have called his foreman to testify during the hearing, but chose not to do so. The Carrier asserts that the burden of calling witnesses on Claimant's behalf rests with Claimant and the Organization. The Carrier finally argues that the assessed discipline was not arbitrary, capricious, or excessive, but was lenient given Claimant's prior record; the claim should be denied in its entirety.

This Board has reviewed the evidence and testimony in this case, and we find that there is no merit to the procedural objections raised by the Organization. The Claimant was afforded all of the procedural rights, and the hearing was fair and impartial.

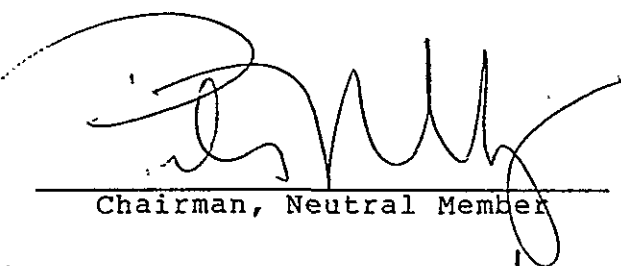
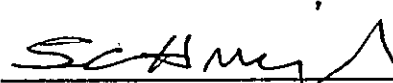
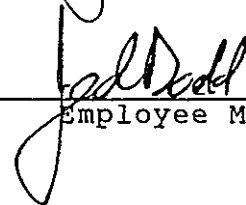
With respect to the substantive matters, this Board finds that the record contains sufficient evidence to support the Carrier's

finding that the Claimant was guilty of the charges of unauthorized absences. The record is clear that the Claimant did not notify the proper individual in order to obtain an excused absence on the days in question. Moreover, there is insufficient evidence that he had appropriate reasons for being absent on those dates in order to qualify them as authorized absences.

Once this Board finds that there is sufficient evidence in the record to support a carrier's finding of guilty, we next turn our attention to the type of discipline imposed. This Claimant had already received three disciplines pursuant to the Absenteeism Agreement in the past year. Consequently, the Carrier was not unreasonable, arbitrary, or capricious in assessing the Claimant a 10-day suspension.

Award:

Claim denied.

  
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Chairman, Neutral Member  
\_\_\_\_\_  
Carrier Member  
\_\_\_\_\_  
Employee Member

Date: 3-25-87