

Special Board of Adjustment No. 986

Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
DIVISION – IBT RAIL CONFERENCE

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) –
NORTHEAST CORRIDOR

Claimant: Duane Hoffman
Award No. 270

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of a thirty day suspension assessed on Engineer Work Equipment Operator (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated May 9, 2008. The Organization claims that the Claimant was unjustly disciplined from his employment with the National Railroad Passenger Corporation ("Amtrak" or the "Carrier"). As a remedy, the Union asked for the Claimant to be made whole for all wages, benefits, and seniority lost from the time of his suspension to his reinstatement, and that the discipline assessed is expunged from his record.

Background of the Case

The Claimant was hired by Carrier on April 7, 1997. The Claimant returned from an extended unassigned leave of absence in or about March 2008. The record

reflected that upon his return he was absent from duty on March 5, 10, 12, 19, 20, 24, 25, 26, 27, 31, 2008 as well as April 1, 2, 3, 7, and 8, 2008. As a result of his absences, the Carrier designated the Claimant as being "medically disqualified" pending a review of his medical condition. By letter dated April 15, 2008 his Program Director ordered him to provide relevant medical documentation including a completed Carrier medical form to the Carrier's medical department for evaluation. The information was to be provided within seven days of receipt of such letter. He was further advised that should he fail to comply he could be disciplined. The Claimant failed to comply as of April 29, 2008. A Notice of Investigation was served upon Claimant on May 9, 2008 which charged the Grievant with violating Amtrak's Standards of Excellence in that he was insubordinate and/or derelict of duty when he failed to obey a direct written order and/or instruction to submit medical documentation regarding his absences. An investigation was held on May 20, 2008. Claimant was found guilty of the charges and the Carrier assessed a thirty day suspension for a violation of the Carrier's Standards of Excellence. All appeals on the property were unsuccessful and the parties agreed to bring the case to this Board for final adjudication.

Opinion of the Board

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the BMWF and Carrier.

After hearing upon the whole record and all the evidence, as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due notice of the hearing hereon. The Claimant, Duane Hoffman, was present at the Board's hearing, was ably represented by the Organization, and was afforded an opportunity to make a statement on his own behalf.

The Carrier contended that its actions in this case were justified and supported by substantial evidence. It argued the record demonstrated that the Claimant did not comply with the written order of April 15, 2008. The Claimant failed to submit the requisite information within seven days of receipt of the letter. While the record established he received the letter the next day, the 16th of April, he admitted at the investigation that he didn't bring the form to his doctor until two days later. He further admitted, according to the Carrier, that when he dropped the form off at the doctor's office he failed to tell them there were time constraints. Finally, the Carrier argued that the Claimant neglected to follow up with the doctor's office or with the Carrier. While the Claimant asserted that the doctor went on vacation, he never bothered to tell the Program Director that such was the case. Consequently when the information - information that was inadequate- was finally received on April 30, 2008 it was too late. Accordingly,

Carrier argued that the 30 day suspension of Claimant was not arbitrary or capricious so as to constitute an abuse of the Carrier's discretion.

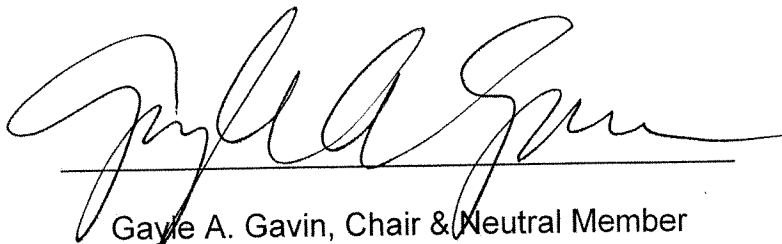
The Organization argued that the whole incident was a misunderstanding. The Carrier, in its haste, failed to consider the circumstances. The Claimant was not insubordinate. He brought the form to the doctor's office and had no control over the fact that the doctor was on vacation. The information the Carrier solicited was received by its medical department and, in point of fact, according to the Organization, the Claimant was scheduled for a return to work examination on the date the investigation was scheduled. The Claimant did not willfully disobey an order and can not be considered insubordinate. Under these circumstances, the Organization argued, the charges should not be sustained. The Claimant has a good record and should not be disciplined for actions outside of his control.

Upon a careful review of the entire record, the Board finds that the Carrier's determination herein was appropriate. The evidence established that the Claimant failed to comply with a written order. By Claimant's own admission he sat on the letter from the Carrier for two days and did nothing. Finally two days after receiving it he went to the doctor's office. By his own admission he failed to show them the letter with the time constraints and failed to tell anyone there that time was of the essence. Additionally there was no follow up on his part to insure that the requisite information was forthcoming from the doctor or that the Carrier was apprised of the reason for the delay. This Board finds his actions to be

shockingly cavalier under the circumstances. During his testimony at the investigation, the Claimant contended that he valued his job. Yet his actions belie such assertion. If he truly valued his job he would have taken responsibility for getting the necessary information to the medical department on time or insuring that the department knew why it wasn't going to be on time. His nonchalance in adhering to the written directive in view of his abysmal attendance record requires this Board to concur with the Carrier. Additionally, the Claimant had been previously disciplined for absenteeism that resulted in a written warning, a reprimand and a ten-day suspension. This latest set of charges directly flowed from his on-going absences. Clearly the Claimant should have been on notice as to the consequences of failing to obey the written order of April 15, 2008. He did so at his own peril. Under such circumstances, this Board cannot find that the Carrier acted arbitrarily or unreasonably when it assessed a thirty day suspension against the Claimant.

Award

The claim is denied.



Gayle A. Gavin, Chair & Neutral Member

Jed Dodd
Jed Dodd, Organization Member

Dated: 2/17/2009

*Dissent
This award is ridiculous.
There is no relationship between
the facts + insubordination*

R. F. Palmer

Rick Palmer, Carrier Member

Dated: 2/17/09