

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 7

Docket No. NEC-BMWE-SD-1307D

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Amtrak

FINDINGS:

On May 5, 1985, Claimant Robert L. Lynch received a notice setting a hearing in order to investigate the Carrier's charges that Claimant was excessively absent during the period April 8, 1985, through April 29, 1985. After several postponements, the hearing actually took place on June 6, 1985.

Subsequent to the hearing, Claimant was found guilty of excessive absenteeism and was dismissed in all capacities from the Carrier on June 19, 1985.

The Organization argues that the Carrier did not meet its burden of proof in that Claimant's absences were all due to a serious medical condition that prevented Claimant from working on a regular basis. The Organization also contends that there is an October 26, 1976, Absenteeism Agreement on the property which governs this Carrier's absenteeism policy; and in this instance, the Carrier is attempting to substitute its own unilateral policy. Finally, the Organization claims that since Claimant's absences were not unauthorized and resulted from a personal illness, the claim should be sustained.

The Carrier argues that the Claimant admitted being absent on April 8, 9, 11, 22, 23, 25, and 29, 1985, and that such a large number of absences in one month is excessive. Further, the Carrier

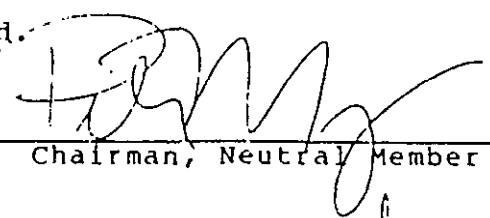
contends that even if the absences had been shown to have been for a legitimate reason, and they were not, they were clearly excessive and subjected the Claimant to discipline. Finally, the Carrier contends that the discharge was not an abuse of discretion, and the claim should be denied.

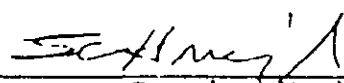
This Board has reviewed the evidence and testimony in this case, and we find there is sufficient evidence in the record to support the hearing officer's finding that the Claimant was guilty of excessive absenteeism. This Board hereby rejects the Organization's arguments with respect to the Absenteeism Agreement, and we hereby incorporate the relevant language in our award in Case No. 3 of this Board. This Board has found that the Absenteeism Agreement relates to unauthorized absences and not excessive absenteeism. The Claimant was admittedly absent on seven days in April 1985, and that was excessive and justified the Carrier's taking disciplinary action.

Once this Board has found that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the amount of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find that it was unreasonable, arbitrary, or capricious. In the case at hand, the Claimant was given a letter of warning for excessive absenteeism on June 8, 1982, and was suspended on four other occasions during the period 1983 through 1986 for excessive absenteeism and incurred one lengthy suspension for being absent without permission. Hence, the Carrier was fully justified in imposing discharge in this case.

AWARD:

Claim denied.



Chairman, Neutral Member

Carrier Member

Union MemberDate: 12-30-86