

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 9

Docket No. NEC-BMW-SD-1218D

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

FINDINGS:

On January 31, 1985, the Carrier issued a Notice of Investigation, informing Claimant Edmund L. Badyna, Jr. that a hearing would be held on February 11, 1985, relating to the charge that Claimant was guilty of excessive absenteeism when he was absent from duty on January 9, 17, and 28, 1985. After a postponement, the hearing was held on February 26, 1985. Subsequent to the hearing, on March 6, 1985, Claimant was found guilty of the charges and assessed a penalty of ten days' suspension (held in abeyance for one year) and a letter of instruction.

The Organization contends that the Carrier did not charge the Claimant with a violation of the Absenteeism Agreement dated October 26, 1976, and the Carrier can therefore not invent a new charge of excessive absenteeism. Moreover, the Organization argues that the Carrier has failed to prove its case by a preponderance of probative evidence. The Organization states that the Claimant notified his foreman and that the project engineer was often unavailable, and therefore the Claimant was forced to place his request for an authorized absence through the proper channel. Therefore, the Organization states, the claim should be sustained.

The Carrier argues that the Claimant was admittedly absent on the days in question and that the Carrier has retained the right to

discipline employees for excessive absenteeism. The Carrier points out that the Absenteeism Agreement only applies to unauthorized absences and not excessive absenteeism. This case involved excessive absenteeism, and the Carrier is not bound by any agreement in that regard and may issue discipline for just cause. Finally, the Carrier points to the discipline record of the Claimant and argues that the discipline imposed was appropriate and the claim should be denied.

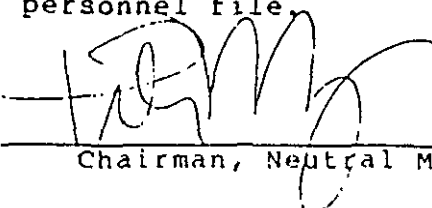
This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the hearing officer's finding of guilty of the charge of excessive absenteeism. The Claimant was admittedly absent on the dates involved, and the Carrier has historically taken the position that three days of absence in one month constitutes excessive absenteeism. With respect to the Organization's argument relating to the Absenteeism Agreement dated October 26, 1976, we hereby incorporate our findings in previous Case No. 3 of this Special Board of Adjustment which deals with that issue. This Board has previously found that the Absenteeism Agreement relates to unauthorized absences and not excessive absenteeism.

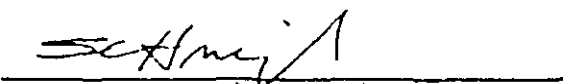
Once this Board has determined that the Claimant was properly found guilty of the charges, we next turn our attention to the type of discipline imposed. This Board generally will not set aside a Carrier's imposition of discipline unless we find that it was unreasonable, arbitrary, or capricious. This Board has reviewed the record of the Claimant, as well as his years of service with the Carrier; and we find that based on the facts of this case, the action taken by the Carrier was unreasonable and arbitrary and constituted excessive discipline. We hereby order that the ten-day suspension be

removed from the Claimant's personnel file and all that remain for this violation be the letter of instruction dated March 6, 1985.

AWARD:

Claim sustained in part. The Carrier is ordered to remove any reference to the ten-day suspension held in abeyance for one year from the Claimant's personnel file.


Chairman, Neutral Member


Carrier Member


Union Member

Date: 12-30-86