

SPECIAL BOARD OF ADJUSTMENT NO. 956

BROTHERHOOD OF MAINTENANCE	)	
OF WAY EMPLOYEES	)	
	)	AWARD NO. 140
and	)	CASE NO. 140
	)	
NEW JERSEY TRANSIT RAIL	)	
OPERATIONS, INC.	)	

STATEMENT OF CLAIM:

The Organization requests that the discipline (30-day suspension) assessed to Mr. H. Santana be expunged from his record, and that he be made whole for all financial losses suffered in connection with this discipline.

FINDINGS:

Special Board of Adjustment No. 956, upon the whole record and all the evidence, finds that the parties herein are Carrier and Employes within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute herein; and that the parties to the dispute were given due notice of the hearing and did participate therein.

In early August, 2006, Claimant submitted a written request to his supervisor to take a leave of absence on September 7, 8 and 11, 2006. His supervisor, D. Gotay, testified that he responded that the Claimant would be required to exhaust any personal and/or vacation days in conjunction with the leave. Since the Claimant had two vacation days remaining, Supervisor Gotay indicated that the first two days of the leave request would be covered by vacation days, leaving only one day to be excused.

Instead, the Claimant used his two vacation days on August 14 and September 5, 2006. Moreover, despite the fact that he had not obtained approval for the requested leave of absence, according to Supervisor Gotay, the Claimant failed to cover his assignment on September 7, 8 and 11, 2006.

The Claimant testified that he thought he had permission to take a leave of absence. He stated:

Well, you know I requested leave of absence way ahead of time. I told Mr. Gotay before my trip, I used to go up to him to hand in the letter. He told me don't worry about it, you still got time Mr. Santana. I'm going to hand it in to Lee, that never happened. So as the time came for my trip I figured you

know maybe they gave it to me, you know the leave of absence. And I just went and I left and I went to go see my mother.

Claimant was charged with being absent without permission and violating the terms of Carrier's attendance policy. After a hearing on the matter, which was held on October 24, 2006, Claimant was issued a thirty-day suspension.

The Organization filed the instant claim appealing the discipline. The Organization contends that the Claimant properly submitted a leave request well in advance of the date of leave and, absent any indication from the Carrier that the request had been denied, he reasonably believed that it was appropriate for him to mark off on September 7, 8 and 11, 2006. The Organization maintains that the Claimant provided credible testimony on that particular point. Moreover, the Organization submits that Supervisor Gotay did not follow the required procedure in that he admittedly failed to forward the Claimant's leave of absence request to higher level supervision.

The Carrier denied the appeal and this claim is now before the Board.

In reaching a proper determination in the instant case, the Board notes at the outset that it is the function of the hearing officer to resolve credibility conflicts in the record. The Board does not make factual findings nor do we decide the credibility of witnesses. Our review is of an appellate nature. That being the case, we have reviewed the evidence and testimony and we find that there is sufficient evidence to warrant the finding that Supervisor Gotay was credible and that the Claimant knew or reasonably should have known that he had no permission to absent himself on September 7, 8 and 11, 2006. Claimant most assuredly was aware that he had no remaining vacation days to cover any part of his absence. Moreover, Claimant admittedly had not obtained approval for his leave request. The fact that the leave request was not denied is not tantamount to approval.

It is true that Supervisor Gotay did not forward the Claimant's leave request but that does not change the result in this case. Based on his conversation with the Claimant, Supervisor Gotay concluded that the Claimant was going to use his two remaining days of vacation to cover part of his absence and therefore only one day of leave would be required. Supervisor Gotay testified without contradiction that he had the authority to approve a single day of unauthorized absence. It was the Claimant's responsibility to inform supervision that the circumstances had changed and that his two vacation days were used to cover other absences. He did not do so. Claimant was in violation of Carrier's attendance policy when he marked off his assignment without any authorization on the dates in question.

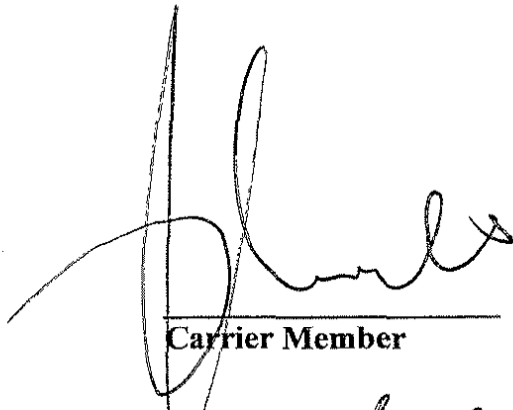
Once this Board has determined that there is substantial evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. The Board will not set aside a Carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.

The Claimant's previous record indicates that he has been counseled, warned and disciplined for violations of Carrier's attendance policy. Only several months prior to the incident at bar, in May 2006, Claimant had been issued a fifteen day suspension for being absent without permission and demonstrating noncompliance with the attendance policy. Under the circumstances, a thirty-day suspension in this case falls within the realm of reasonable corrective discipline for the demonstrated misconduct.

Based on all the foregoing, the claim must be denied.

AWARD

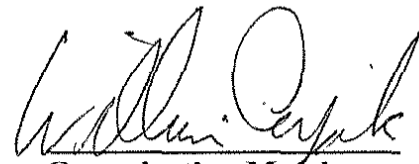
Claim denied.



Carrier Member



ANN S. KENIS
Neutral Member



Organization Member

Dated this 3rd day of June, 2008.