

BEFORE SPECIAL BOARD OF ADJUSTMENT NO. 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NORTHEAST CORRIDOR

Case No. 141

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The dismissal of B&B Mechanic J. Gordian for alleged violation of NRPC Rule O was harsh, arbitrary, capricious, without just cause and in violation of the Agreement (System File NEC-BMWE-SD-2737D).
2. The Claimant shall be exonerated of the charge leveled against him, he shall have his record cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

Claimant was employed by the Carrier as a B&B mechanic at Bear, Delaware.

On July 17, 1990, the Carrier notified the Claimant to appear for a formal investigation in connection with the following charges:

Violation of NRPC Rules of Conduct, Rule O.

Specifically: You have been absent from your assigned duties in part or in whole on the following dates:

Early Quit	7/ 6/90	1.08	3.00	1.52
Late	7/ 6/90	7.00	7.08	0.08
Sick-No Pay	6/25/90	7.00	3.00	8.00
Late	6/14/90	7.00	7.21	0.21
Late	6/12/90	7.00	7.06	0.06

Due to your past record, this constitutes excessive absenteeism.

After three postponements, the hearing took place on October

1, 1990. On October 11, 1990, the Claimant was dismissed from the service of the Carrier. Thereafter, the Organization filed a claim on the Claimant's behalf, challenging his dismissal. The Carrier denied the claim.

The parties being unable to resolve the issues, this matter came before this Board.

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 finding that the Claimant was guilty of excessive absenteeism in June and July of 1990, thereby subjecting himself to discipline.

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

In this type of disciplinary action, this Carrier subscribes to a progressive disciplinary system which requires that Claimants receive all of the steps of the disciplinary system before they are terminated. In this case, the record reveals that in 1990, the Claimant received two counseling sessions, two warning letters, and one three-day suspension for excessive absenteeism. There is no question that his record was atrocious. However, under the Carrier's rules, the Claimant was entitled to a ten-day suspension to put him on final notice that any further

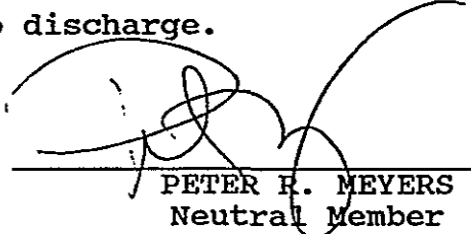
excessive absenteeism problems would lead to his discharge. In this case, the Claimant did not receive the final step of the progressive discipline prior to being terminated. Therefore, the Carrier did not have just cause to terminate his employment.

This Board has considered the facts in this case and the poor excessive absenteeism record of the Claimant and we have decided that the Claimant shall be returned to work on May 1, 1991, and the period that he was off from work shall be treated as a lengthy suspension. If the Claimant was not returned to work by May 1, 1991, he shall receive backpay subsequent to that date.

The Claimant should be told by the Carrier that this Board considers his absenteeism record to be atrocious and any further excessive absenteeism on his part will undoubtedly lead to his final discharge.

AWARD

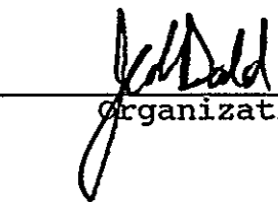
Claim sustained in part. Claimant is to be returned to work on May 1, 1991 and the period prior to that time shall be considered a lengthy discipline. Claimant should be informed that he is currently in the last stage of the progressive disciplinary system and any further excessive absenteeism on his part will lead to discharge.



PETER R. MEYERS
Neutral Member



Patricia A. Engle
Carrier Member



J. M. Dadd
Organization Member

Dated: 3-31-92