

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 15
Docket No. NEC-BMWE-SD-1306D

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On May 28, 1985, Claimant C.T. Wright was notified by Carrier to appear at a hearing in connection with the charge that he had been excessively absent during April and May 1985. The hearing was held as scheduled on June 11, 1985. As a result of the hearing, Claimant received a suspension of ten calendar days.

The Organization contends that Carrier violated Rule 71(a) by failing to hold the hearing within 30 days of the date that the Division Engineer had knowledge of a possible violation; three of the dates cited in the charge are outside the thirty-day period. The Organization asserts that Carrier waived its right to process a charge based on these three dates. Moreover, because the charge is timely with respect to only one of the cited dates, the charge cannot constitute a claim of "excessive" absence.

The Organization further argues that Carrier created a charge of "excessive absenteeism," which is not included in the parties' Absenteeism Agreement of October 25, 1976; this Agreement does not indicate that three absences in a thirty-day period may subject an employee to discipline. Claimant was never notified that such a charge exists, or that an excessive absenteeism policy is in effect. The Organization contends that this lack of notice fatally deprived Claimant of his due process right to a fair and impartial hearing. The Organization therefore argues that the claim should be sustained.

The Carrier argues that the Absenteeism Agreement was intended to apply only to unauthorized absence, not excessive absenteeism. Carrier further contends that the charge gives Claimant sufficient notice of the nature of the allegations so as to enable him to prepare a defense. Moreover, neither Claimant nor the Organization objected at the hearing that they were unable to understand the charge or prepare for the hearing. The Carrier asserts that Claimant received proper notice; the record does not support the claim that the "excessive absenteeism" charge was improper. Carrier further argues that the record contains no evidence of prejudgment or prejudicial conduct by the hearing officer.

The Carrier additionally asserts that all of the cited dates constitute the period during which the excessive absence occurred. The hearing was properly scheduled within 30 from the last date of absence. Carrier contends that by its nature, the charge require review of period of time; the charge notice therefore met Rule 71's requirements.

The Carrier finally argues that Claimant admitted to being absent on the cited dates. Claimant's explanations for his absences do not serve as excuses, nor do they alter Carrier's charge that the absences were excessive. The Carrier therefore contends that the claim should be denied in its entirety.

This Board has reviewed the evidence and testimony in this case, and we find that the procedural objections of the Organization are without merit. The hearing was scheduled within 30 days of the last date of absenteeism, which constituted the charge of excessive absenteeism. As we have stated in the past, excessive absenteeism is a cumulative offense; and it is usually impossible to schedule a

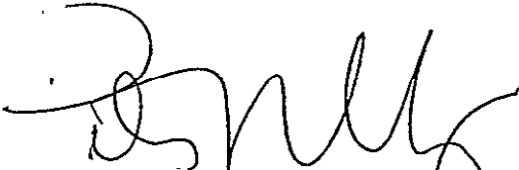
hearing within 30 days of the first date constituting the excessive absenteeism. In this case, the hearing was originally scheduled for June 11, 1985; and the last day of absenteeism was May 20, 1985. The action of the Carrier complied with Rule 71.

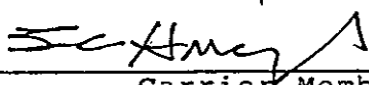
With respect to the substantive issue, this Board finds that there is sufficient evidence in the record to support the Carrier's finding that the Claimant was guilty of excessive absenteeism. As this Board has ruled in the past, the October 25, 1976, Absenteeism Agreement deals with unauthorized absenteeism. The Carrier retains the right to discipline employees for excessive absenteeism and has consistently held that three days of absence in a one-month period would be considered to be excessive.

Once this Board finds that there is sufficient evidence in the record to support the finding of guilty, we next turn our attention to the type of discipline imposed. The record reflects that this Claimant has received a letter of warning for absenteeism in October 1984. Consequently, it was not unreasonable, arbitrary, or capricious for the Carrier to issue a 10-day suspension to the Claimant for the charges involved in this case.

Award:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: _____

3-25-87