

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK - Northeast Corridor)

Case No. 167

STATEMENT OF CLAIM: Claim of the Brotherhood that:

1. The dismissal of Mr. R. Hoover for allegedly being excessively absent, in whole or in part on December 8, through 18, 1992 inclusive and December 28, 1992, January 5, 1993 through January 7, 1993, was without just and sufficient cause and in violation of the Agreement (System File BMW-E-D-192).
2. The Claimant shall be reinstated to service with seniority and all other rights unimpaired, his record shall be cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.

FINDINGS:

The Claimant, Randy Hoover, was a trackman employed by the Carrier.

On January 8, 1993, the Claimant was advised to appear for a formal investigation to determine whether he was guilty of excessive absenteeism. Based on the Claimant's past record which included several violations of the Excessive Absenteeism Policy and a discipline for fighting and one for dishonesty, in addition to his short term of service, the Carrier terminated the Claimant's employment.

The Organization appealed the dismissal contending that the Claimant was suffering from a condition known as Bipolar II Disorder and was being treated by a psychiatrist. Furthermore, the Claimant had "received the proper documentation to obtain

a medical leave of absence from the Carrier's industrial nurse". The Claimant testified that he had attempted to obtain his supervisor's signature on the medical leave forms but was unsuccessful.

The Carrier denied the appeal contending that since this was the Claimant fourth violation of the Excessive Absenteeism Policy, he was subject to dismissal. Therefore, the Carrier denied the appeal.

The parties not being able 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 during the 30-day period as charged by the Carrier. The Claimant has presented some documentation by two doctors, one a neurologist and one a psychiatrist, which indicate that the Claimant has been suffering from some psychiatric disorders. However, one of those notes from Dr. Hirsch states that the Claimant could return to work without restriction on December 16, 1992. Dr. Mandelbaum's notes do not state that the Claimant is unable to work but merely indicate that the Claimant is suffering from Bipolar II Disorder.

Consequently, the Claimant has not provided any excuses for his absenteeism from December 16 through December 18, 1992; December 28, 1992; and January 5 through January 7, 1993.

This Board has held on numerous occasions in the past that three absences in a 30-day period constitute excessive absenteeism.

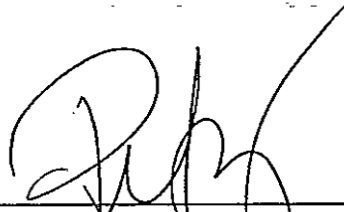
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or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

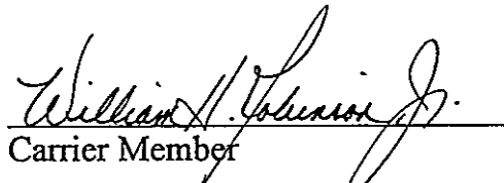
Claimant's record indicates that he had previously been counseled and/or warned twice due to his excessive absenteeism and had accepted a ten-day suspension as a result of the excessive absenteeism. This Claimant has also been suspended for dishonesty and fighting in the past year. The Carrier's excessive absenteeism policy calls for discharge after the fourth violation of the excessive absenteeism policy. This is the fourth violation.

This Board recognizes that the Claimant may be suffering from some serious psychiatric disorders. However, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. There is simply not enough medical evidence to support the Claimant's position that he was unable to come to work on the dates in question. The notes from the two doctors are not specific on that point. Moreover, it is important to note that this is an excessive absenteeism case and, therefore, as this Board has held on numerous occasions in the past, the reasons for the absence are not relevant.

AWARD

Claim denied.



PETER R. MEYERS
Neutral Member

Carrier Member
DATED: July 7, 1994

Organization Member
DATED: 7-7-94