

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 18

Docket No. NEC-BMWE-SD-1312D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On May 21, 1985, Claimant A. Bradshaw was notified by Carrier to appear at a hearing in connection with the charge that he was absent without authorization on several dates in April and May 1985. The hearing was held as scheduled on June 11, 1985; as a result of the hearing, Claimant received a ten-day suspension.

The Organization challenges the timeliness of the hearing. Rule 71 requires that Carrier schedule a hearing within 30 days of the Division Engineer's knowledge of a possible violation. In this case, only one of the cited dates falls within 30 days of the scheduled hearing. The Organization contends that Carrier's case is therefore flawed, and the discipline is void.

The Organization further asserts that Carrier failed to meet its burden of proof. Carrier does not dispute that on one of the cited dates, Claimant did report his absence to the Track Office at 7:30 a.m.; Carrier presented no evidence to support its assertion of an unwritten policy that calls received after 7:00 a.m. will not be accepted as authorized absences. Moreover, Claimant testified that on three other cited dates, he received his foreman's permission to leave early; the absenteeism agreement does not specify who has authority to permit an absence, nor did Carrier offer evidence to support its assertion that another unwritten policy requires employees to get permission from the Track Office. The Organization

also asserts that Claimant had a legitimate excuse for the final cited absence; because he was in police custody, this absence was due to a "court appearance."

The Organization next argues that even if Carrier sustained its burden of proof and did not violate Claimant's procedural rights, the assessed discipline should be overturned. Under the absenteeism agreement, the appropriate discipline for a first offense is a written warning. The Organization contends that Carrier did not show that Claimant had been furnished with a written warning during the preceding twelve months. The Organization therefore asserts that Claimant should have been issued a written warning, not a suspension. The Organization contends that the claim should be sustained.

The Carrier asserts that its time records, the testimony of its witness, and Claimant's own admission establish that Claimant was absent without authorization on the cited dates. The record shows that Claimant did not have permission or a legitimate excuse for his absences. Moreover, Claimant's own testimony proves that he did not report his absence on two of the cited dates. Carrier further argues that even if Claimant notified his foreman of his "early quits," which Carrier contends is not supported by the record, such notice does not alter the conclusion that Claimant was absent without either permission or legitimate reason on the cited dates. Carrier also asserts that incarceration is not a legitimate cause for absence.

The Carrier additionally contends that the parties' past practice under Rule 71 establishes that the charge was timely; one of the five cited dates that constitutes this offense falls within the thirty-day period. Even if the Organization's assertion on this point is correct, Carrier asserts that Claimant was absent without

permission on the cited date within the thirty-day period; this absence was a violation of the absenteeism agreement.

The Carrier additionally argues that the record includes a letter of warning issued to Claimant in January 1985, in connection with absences without permission during December 1984. Carrier therefore argues that the assessed suspension was the appropriate discipline under the absenteeism agreement. Carrier asserts that the assessed discipline was not arbitrary, capricious, or excessive, and that the claim should be denied in its entirety.

This Board has reviewed the evidence and testimony in the record, and we find that the Organization's procedural arguments have no merit. The Claimant was charged with being absent without proper authorization on May 13, 1985. The hearing was held on June 11, 1985, within the 30-day requirement of the agreement. Since only one unauthorized absence is required to bring into play the disciplinary procedures of the agreement, this Board finds that there was nothing that prevented the Carrier from proceeding with the investigation.

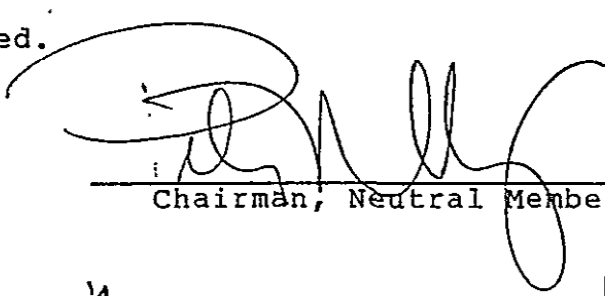
With respect to the substantive matter, there is no question that the Claimant was absent without proper authorization on May 13, 1985. Although, under the agreement, a claimant can receive an authorized absence for a court appearance, there is no showing in the records that the Claimant notified the Carrier prior to his absence on May 13, 1985, and obtained authorization to be away from work. Unfortunately, the Claimant had been arrested the previous day and was not released until after his shift began on May 13, 1985. However, that type of situation does not automatically convert the May 13, 1985, absence to an authorized absence. In fact, since he had not received permission

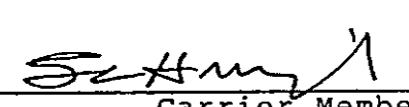
to be away from work on that day, it was an unauthorized absence and subjected the Claimant to discipline.

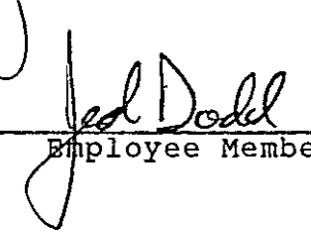
Once we have determined that there is sufficient evidence for the finding of guilty, this Board next turns its attention to the type of discipline imposed. The record is clear that the Claimant received both a letter of warning and a previous 10-day suspension in the year prior to the June 1985 hearing. Consequently, it was not unreasonable, arbitrary, or capricious for the Carrier to impose a 10-day suspension for the unauthorized absence on May 13, 1985. A strict reading of the agreement would have allowed the Carrier to impose even more serious discipline or discharge.

Award:

Claim denied.



Chairman, Neutral Member

Carrier Member

Employee Member

Date: 3-25-87