

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 19
Docket No. NEC-BMWE-SD-1320D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On May 21, 1985, Claimant W.D. Burgess was notified by Carrier to appear at a hearing in connection with the charge that he was absent without authorization on three dates in April and May 1985. After a postponement, the hearing was held on June 25, 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. Claimant testified that on two of the cited dates, he had doctor's appointments for treatment of an injury. Moreover, Carrier's general foreman testified that he released Claimant to get treatment for his injury; the Organization asserts that the general foreman apparently excused Claimant, yet charged Claimant with an unauthorized absence for the day following this release. The Organization asserts that no reason was given for this decision. The Organization points out that under the absenteeism agreement, illness is a legitimate excuse for absence; all of the cited absences were related to Claimant's injury. The Organization asserts that Claimant

has not violated the absenteeism agreement; the claim should be sustained.

The Carrier asserts that there is no dispute that Claimant was absent on the cited dates. The testimony of Claimant's general foreman shows that Claimant did not notify proper supervision of his absences, and Carrier's time records prove Claimant was absent on the cited dates. The Carrier further argues that the Organization's assertions do not mitigate Claimant's proven violations. Carrier asserts that the record shows Claimant did not give any notice or excuse to his foreman about his absences.

The Carrier also contends that the parties' past practice under Rule 71 establishes that the charge was timely; one of the three 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 assessed discipline was not arbitrary, capricious, or excessive. Carrier therefore contends that the claim should be denied in its entirety.

This Board has reviewed all of the evidence and testimony in this case; and we find that since the original hearing was scheduled within 30 days of the last date with which the Claimant was charged with being absent without proper authorization, there has been no violation of Rule 71 with respect to the May 8, 1985, date. Therefore, the Carrier had a right to hold an investigation into that incident of absence without proper authorization.

With respect to the substantive claim, the record is clear that

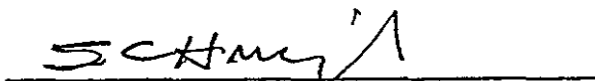
the Claimant gave no appropriate excuse or notification to management for his absence on May 8, 1985. Consequently, it must be considered unauthorized pursuant to the agreement between the parties. Hence, he was appropriately found guilty for the May 8, 1985, unauthorized absence.

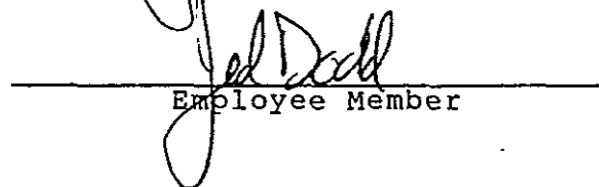
Once this Board determines that a carrier had sufficient evidence to find a claimant guilty of the offense with which he was charged, we next turn our attention to the type of discipline imposed. In this case, the Claimant's record shows that he received a letter of warning in April 1985 for a violation of the Absenteeism Agreement. Consequently, pursuant to the agreement between the parties, this second violation within the year made him eligible for a 10-day suspension. We cannot find that the action taken by the Carrier in suspending him for 10 days was unreasonable, arbitrary, or capricious.

Award:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: 3-25-87