

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 26
Docket No. NEC-BMWE-SD-1334D

PA FED BMWE

JUN 18 1987

PARTIES: Brotherhood of Maintenance of Way Employes
TO

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

On June 10, 1985, Claimant Dana Kellum was issued a notice of investigation, stating that a hearing would be held into the charge against him for excessive absenteeism, wherein he was absent from duty in whole or in part on May 20 and 29, 1985, and June 3, 1985. After a postponement, the hearing was held on July 15, 1985. As a result of the hearing, the Claimant was issued a ten-calendar-day suspension. The Organization subsequently filed a claim on Claimant's behalf, challenging the discipline.

The Organization contends that the Carrier had no contractual right to hold the trial in absentia, and therefore the issuance of discipline was improper and should be voided. The Organization also contends that the charge of absenteeism for the date of May 20, 1985, is beyond the 30-day time limit for preferring charges under Rule 71. Finally, the Organization contends that the Carrier has no right to discipline an employee for the overly broad charge of excessive absenteeism and that there is an Absenteeism Agreement that does not include violations of that type.

The Carrier contends that the holding of the trial in absentia was not prejudicial to the Claimant's rights. The Claimant was fully aware of the time and place of his rescheduled hearing, and he chose not to appear and defend himself. Moreover, the Carrier argues that the Claimant was properly charged within the 30 days from the last

date cited in the charge. Finally, the Carrier contends that it has the right to discipline employees for excessive absenteeism, even though that charge is not addressed in the Absenteeism Agreement between the parties.

This Board has reviewed the evidence and testimony in this case, and we find that there is no merit to the procedural claims raised by the Organization. The Claimant had notice of the scheduled hearing, a union representative present, and he chose not to attend. Hence, the hearing in absentia did not violate any of his rights. Also, with respect to the date of the charge, it was within 30 days of the last date with which the Claimant was charged with excessive absence; and this Board has held in the past that that complies with the 30-day time requirement.

With respect to the substantive charge, 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. Three absences in a 30-day period have been consistently held by the Carrier to constitute what it considers excessive absenteeism. There is no dispute that the Claimant was absent three times in the 30-day period. With respect to the Organization's argument regarding the charge of excessive absenteeism, this Board has held on numerous occasions in the past that the Carrier has every right to issue discipline for excessive absenteeism despite the fact that it is not mentioned in the Absenteeism Agreement between the parties.

Finally, with respect to the discipline imposed, the Claimant had received a written warning for excessive absenteeism within two months prior to the incident that brought about the suspension. Consequently, the Carrier abided by its progressive discipline system

by following the written warning with a suspension. This Board cannot find that its action taken in this case was unreasonable, arbitrary, or capricious.

AWARD:

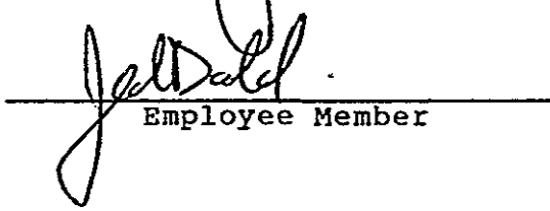
Claim denied.



Chairman, Neutral Member



Carrier Member



Employee Member

Date: 1/1/87