

Special Board of Adjustment No. 986

Parties to the Dispute

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE

V.

NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK) –
NORTHEAST CORRIDOR

Claimant: Duane Hoffman
Award No. 269

Organization's Statement of Claim

The Brotherhood of Maintenance of Way Employees ("BMWE" or the "Organization") appealed the discipline of dismissal assessed on Engineer Work Equipment Operator (the "Claimant") on charges that were set forth in the Carrier's Notice of Investigation, dated April 14, 2008. The Organization claims that the Claimant was unjustly dismissed from his employment with the National Railroad Passenger Corporation ("Amtrak" or the "Carrier"). As a remedy, the Union asked for the Claimant to be made whole for all wages, benefits, and seniority lost from the time of his dismissal to his reinstatement, and that the discipline assessed is expunged from his record.

Background of the Case

The Claimant was hired by Carrier on April 7, 1997. The Claimant returned from an extended unassigned leave of absence in or about March 2008. The record

reflected that upon his return he continued a pattern of absenteeism. He was absent on three occasions in a thirty day period prior to April 8, 2008. Additionally he was absent on fifteen separate dates between March 3, 2008 – the date he returned from an extended unassigned leave of absence and April 8, 2008. A Notice of Investigation was served upon Claimant on April 14, 2008 which charged the Grievant with violating Amtrak's Standards of Excellence and its National System Attendance Policy for excessive absence. After a mutual postponement as well as a postponement at the behest of the Organization, an investigation was held on May 20, 2008. Claimant was found guilty of the charges. Carrier dismissed the Claimant on June 2, 2008 for excessive absences in violation of the Carrier's National System Attendance Policy and its Standards of Excellence. All appeals on the property were unsuccessful and the parties agreed to bring the case to this Board for final adjudication.

Opinion of the Board

This Board derives its authority from the provisions of the Railway Labor Act, as amended, together with the terms and conditions of the Agreement by and between the BMW and Carrier.

After hearing upon the whole record and all the evidence, as developed on the property, the Board finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the parties were given due

notice of the hearing hereon. The Claimant, Duane Hoffman, was present at the Board's hearing, was ably represented by the Organization, and was afforded an opportunity to make a statement on his own behalf.

The Carrier contended that its actions in this case were justified and supported by substantial evidence. It argued that its attendance policy specifically stated that three occurrences of absenteeism and/or tardiness in a 30-day period constituted a violation of the Carrier's Standards of Excellence and a violation of its attendance policy. Eleven or more days of absence in any twelve month period also violated its Standards of Excellence and its attendance policy. The Claimant's payroll records demonstrated that for a 30-day period prior to April 8, 2008 the Claimant was absent three or more days. Additionally he was absent more than eleven days in the twelve month period prior to April 8, 2008. In point of fact the Carrier argued, he was absent from duty forty-one days in the one year period prior to April 8, 2008, not counting his unassigned leave of absence period. While it recognized that the Claimant may indeed have had legitimate medical problems due to a motorcycle accident, the Carrier argued that the fifteen days the Claimant was absent from March 3, 2008 – his return date – and April 8, 2008 occurred after the Claimant return from an unassigned leave of absence. The Carrier further asserted it had a right to expect regular attendance from its employees. His medical difficulties did not relieve the Claimant of his responsibility in attending to his duties nor did it impact the Carrier's right to discipline its employees for excessive absenteeism. The Carrier cited several

awards issued by prior Boards upholding the Carrier's right to discipline for excessive absenteeism, regardless of the reasons for the absenteeism. See SBA No. 986, Award No. 153; SBA No. 986, Award No. 167; SBA No. 986, Award No. 100. Carrier contended that while Claimant may have been injured, he did not take the necessary steps to have the absences approved. It argued that Claimant had many resources available to him, namely, Carrier's Family and Medical Leave Policy (FMLA) to deal with his absences from work. Carrier cited the Claimant's disciplinary record of a written warning, a reprimand and a ten days suspension – all for absenteeism - as demonstrating that the Claimant has been unable or unwilling to change his behavior. Therefore, the Claimant had no excuse for his excessive absenteeism. Accordingly, Carrier argued that the dismissal of Claimant was not arbitrary or capricious so as to constitute an abuse of the Carrier's discretion.

The Organization argued that the Carrier failed to prove the charges. First of all, it contended that the Carrier's only witness, the Program Director, had no first hand knowledge of the facts surrounding the charges. He merely acted as a conduit to enter documents into the record. He had no first hand knowledge and his testimony differed markedly from the Claimant's. Claimant proved he was injured in a motorcycle accident and was absent for legitimate reasons. His supervisors were aware of his accident. Upon his return he was still experiencing the effects from his injury. This caused him to be unable to report for work. Each time he contacted his supervisors in advance of his absence. Under these

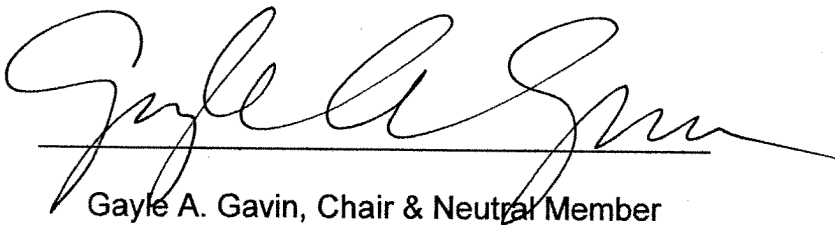
circumstances, the Organization argued, the absences were justified. The Claimant had a good record prior to his misfortune and should not be dismissed.

Upon a review of the entire record, the Board finds that the Carrier's determination herein was appropriate. The evidence established that the Claimant was guilty of excessive absenteeism. Claimant was absent more than three times within a thirty-day period as well as more than eleven days during a one year period, in violation of the Carrier's National System Attendance Policy and its Standards of Excellence. It is well established that Carrier has the right to maintain its standards of conduct and establish its procedures to implement them. The Carrier's National System Attendance Policy established the standards of attendance expected of its employees. Clearly the Carrier has a right to expect its employees to come to work and perform the duties for which they were hired. When employees are absent from work not only do they disrupt the operational component of the work place but they also place an unfair burden on their fellow employees. In the instant matter the Claimant had an obligation to follow the prescripts of the Carrier's attendance policy, including taking measures to have his absences approved and the record demonstrated that he failed to do so. Excessive absenteeism, regardless of the reasons for such absences, is considered to be a serious offense warranting dismissal. Additionally, the Claimant had been previously disciplined for absenteeism that resulted in a written warning, a reprimand and a ten-day suspension. He should have been on notice as to the consequences of continuing down such path. This he didn't do

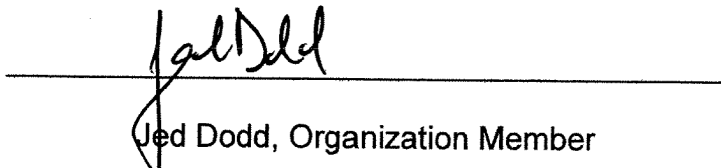
and continued, even after he returned from his unassigned leave of absence to absent himself from duty. Under such circumstances, this Board cannot find that the Carrier acted arbitrarily or unreasonably when it finally terminated the Claimant's employment.

Award

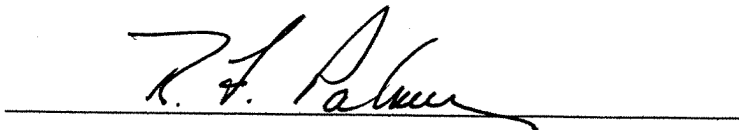
The claim is denied.



Gayle A. Gavin, Chair & Neutral Member



Jed Dodd, Organization Member
Dated: 2/17/2009



Rick Palmer, Carrier Member
Dated: 2/17/08