

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 27

Docket No. NEC-BMWE-SD-1323D

PA FED BMWE

PARTIES: Brotherhood of Maintenance of Way Employees
TO
DISPUTE: National Railroad Passenger Corporation (Amtrak)

JUN 18 1985

FINDINGS:

On May 23, 1985, Claimant James Oliver received a notice of investigation, scheduling a hearing for June 11, 1985, into the charges against him of excessive absenteeism, in which he was charged with being absent from duty in whole or in part on April 22 and 23, 1985, and May 10 and 16, 1985. After a postponement, the hearing was held on July 2, 1985. As a result of the hearing, the Claimant was issued a ten-calendar-day suspension. The Organization subsequently filed a claim on the Claimant's behalf, challenging the discipline.

The Organization contends that the Carrier violated Rule 71 by failing to schedule the trial within 30 days of the incident which led to the charge. The Organization states that the hearing was not originally scheduled until June 11, 1985, which was 32 days after May 10, 1985. The Organization also contends that the Carrier has no right to charge an employee with excessive absenteeism since the charge is vague, has never been defined, and is therefore a violation of the Claimant's right to a fair and impartial trial. Finally, the Organization contends that the Claimant submitted a note from his dentist stating that he was under treatment for root canal work on April 22 and 23, 1985.

The Carrier contends that the record is clear that the Claimant was guilty on the four days in question. The Carrier also points out

that the hearing was scheduled within 30 days of the last date with which the Claimant was charged with excessive absenteeism. The Carrier further contends that the charges against the Claimant fully comply with Rule 71 requirements. Finally, the Carrier states that even though the Claimant may have had a justifiable reason for being absent, it still disciplines employees for excessive absenteeism if they are absent three times or more within a 30-day period.

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 Carrier's finding that the Claimant was guilty of the charge of excessive absenteeism. The initial hearing was scheduled within 30 days of May 16, 1985, which was the last of the dates which comprised the charge of excessive absenteeism. Moreover, the notice of hearing more than adequately advised the Claimant of the charges against him.

With respect to the Organization's claim that the charge of excessive absenteeism is too vague, this Board has stated on numerous occasions in the past that the Carrier is fully within its rights to discipline an employee for excessive absenteeism. This Carrier has consistently held that three or more days within a 30-day period constitute excessive absence and has imposed discipline for action of that sort by an employee.

Also, this Board has held on numerous occasions that despite the justifiable reasons for absences, the Carrier has a right to expect regular attendance from its employees, even if the reason for the absences are justifiable.

Finally, the Claimant had received a five-day suspension in May 1985 for excessive absenteeism. Consequently, this Board cannot find that the ten-day suspension in July 1985 was unreasonable, arbitrary,

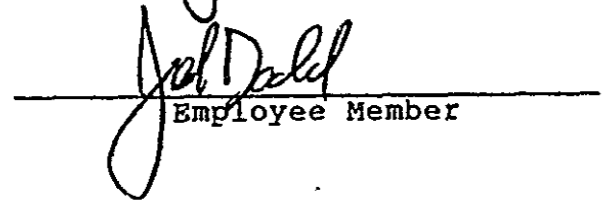
or capricious.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: 7/1/87