

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 3

Docket No. NEC-BMWE-SD-1279D

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: Amtrak

FINDINGS:

In April 1985, Claimant Gregory Young was charged with excessive absenteeism for being absent on March 7, 25, and 26, 1985, and was notified to appear at an investigation, which was held on April 25, 1985.

Following the hearing, the Claimant was found guilty of excessive absenteeism and suspended for ten working days.

The Organization contends that the charge of excessive absenteeism is vague and is precluded by the existence of the Absenteeism Agreement of October 26, 1976, between the parties, which spells out legitimate excuses for an employee's absence from work. The Organization argues that the Claimant was absent on the three days in question for legitimate reasons, illness and a court appearance; and, therefore, it was improper for the Carrier to impose discipline on the Claimant. Finally, the Organization argues that the hearing was scheduled too late to comply with the rules and that the Claimant was denied other procedural rights at the hearing.

The Carrier argues that the trial was fair and impartial and that there was substantial evidence to support the finding of guilty. The Carrier also contends that it has the right to discipline employees for excessive absenteeism and that the Absenteeism Agreement was never meant to address that problem. The Carrier argues that it

has consistently applied the Absenteeism Agreement to unauthorized absences and not to excessive absenteeism. Finally, the Carrier contends that the Claimant was properly found guilty of the charges against him and the claim should be denied.

This Board has reviewed the evidence and testimony in this case, and we find that the procedural claims have no merit. The Claimant was afforded all of his due process rights. Moreover, Claimant and his representative raised no objection or criticisms about the notice of the hearing at the hearing.

With respect to the substantive issues, it is undisputed that the Claimant was absent on the three days in question. Although the Claimant's reasons for his absences were legitimate, sickness and court appearance, this Board finds that the Carrier has the right to enforce rules dealing with excessive absenteeism, even if the reasons for those absences are legitimate. The agreement between the parties dated October 26, 1976, clearly deals specifically with the question of unauthorized absences and the type of discipline that the Carrier can impose when an employee is guilty of that offense. In each of the first three paragraphs, the term "unauthorized absence" is used. In no way does the October 26, 1976, agreement deal with the question of excessive absenteeism; and, under its several management rights, the Carrier has the authority to set up and enforce reasonable rules with respect to excessive absenteeism.

In the instant case, the Carrier has determined that the Claimant's three admitted absences in March 1985 constituted excessive absenteeism. There is nothing in the record, such as comparative evidence, to dispute that those three days of absenteeism in one month were excessive. Hence, the Board must find that the Claimant was

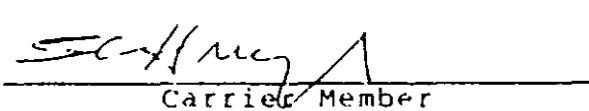
properly found guilty of the offense with which he was charged.

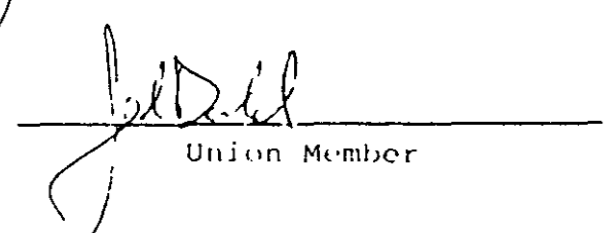
Once we have determined that there was sufficient evidence in the record to support the Carrier's finding of guilty, we next turn our attention to the nature of the discipline imposed. This Board will normally not set aside a Carrier's imposition of discipline unless it was unreasonable, arbitrary, or capricious. The Claimant's work record reveals that he had previously received several warning letters related to absenteeism, and the Carrier believed that those warnings had not done their job. This time, the Carrier suspended the Claimant. Under the circumstances, we cannot find that the Carrier's action was unreasonable, arbitrary, or capricious; and we will not set aside the suspension.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Union Member

Date: 12-20-86