

SPECIAL BOARD OF ADJUSTMENT NO. 986

PA FED BMWE

Case No. 30

JUN 18 1987

Docket No. NEC-BMWE-SD-1324D

PARTIES: Brotherhood of Maintenance of Way Employes

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated May 21, 1985, Claimant L. Lowery was notified to attend a hearing on the following charge:

Violation of the Amtrak-BMWE Absenteeism Agreement in that your were absent without authorization on the following dates: April 21, 28, 1985, May 6, 1985.

After two postponement, the hearing was on June 25, 1985. As a result of the hearing, Claimant was assessed a ten-day suspension. The Organization subsequently filed a claim on Claimant's behalf, challenging the suspension.

The Organization initially contends that the charge was untimely under Rule 71. The hearing originally was scheduled to take place more than thirty days after the first two dates listed in the charge. The Organization argues that Carrier is precluded from charging Claimant with unauthorized absences on these two dates. The Organization asserts that this is a fatal procedural flaw and requires Claimant's exoneration.

The Organization goes on to assert that Carrier did not produce any credible evidence that Claimant failed to comply with Carrier policy. Carrier's witness had no direct knowledge of the incident at issue and also exhibited a lack of familiarity with key aspects of this case. Carrier therefore failed to meet its burden of providing direct, probative evidence to support the charge. The Organization contends that the claim should be sustained.

The Carrier initially argues that there is no evidence that any Carrier action denied Claimant's due process rights or violated any agreement rules. Carrier asserts that Claimant received a fair and impartial hearing. Carrier also argues that Claimant did not appeal the assessed discipline within the time period provided in Rule 74; this claim is procedurally flawed and must be denied. Carrier asserts, however, that the charge itself is timely; the offense consists of three absences, the last of which occurred within Rule 71's thirty-day limit.

The Carrier next contends that there is no dispute that Claimant was absent on the cited dates. Moreover, the record establishes that Claimant did not report off, nor did he offer any legitimate cause for his absences. The assessed discipline was not arbitrary, capricious, or excessive; in fact, the discipline is exactly what is prescribed in the Absenteeism Agreement. 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 there is sufficient evidence in the record to support the finding that the Claimant was guilty of being absent without authorization on the three dates set forth in the charge. This Board has ruled on several occasions in the past that the hearing need only be scheduled within 30 days after the last date in an absenteeism case. In this case, the hearing was originally scheduled to be held on May 30, 1985, which was well within the 30-day limit after the May 6, 1985, unauthorized absence.

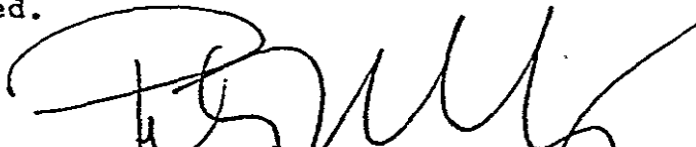
The record is clear that the Claimant was absent on the three dates in question; the record is also clear that there was no legitimate reason set forth for his absences, nor did he properly

report off from work. Consequently, he was properly found guilty of the offense of unauthorized absence.

Once this Board determines that a claimant was properly found guilty of the offense with which he was charged, we next turn our attention to the type of discipline imposed. The record reflects that on November 14, 1984, the Claimant received a letter of warning pursuant to the Absenteeism Agreement. The next step in the disciplinary procedure is a ten-day suspension. Hence, the Claimant was properly assessed the appropriate discipline.

AWARD:

Claim denied.


Chairman, Neutral Member


Carrier Member


Employee Member

Date: 7/1/87