

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
DIVISION – IBT RAIL CONFERENCE
and
NATIONAL RAILROAD PASSENGER CORPORATION (AMTRAK)
NORTHEAST CORRIDOR**

Case No. 300

STATEMENT OF CLAIM: “Claim of the System Committee of the Brotherhood that:

1. The discipline (dismissal) imposed on Mr. A. Scarpone for alleged violation of Amtrak’s Standards of Excellence involving Attending to Duties and violation of Amtrak’s National System Attendance Policy for Agreement Covered Employees as a result of his being absent on at least eleven (11) occasions in the twelve (12) month period prior to and including November 8, 2012 was without just and sufficient cause, unwarranted and in violation of the Agreement (System File NEC-BMWE-SD-5141D).
2. As a consequence of the violation referred to in Part 1 above, the Carrier must remove the discipline from Mr. Scarpone’s record and compensate him for all losses suffered as a result of the Carrier’s unjust and improper discipline.”

FINDINGS:

By letter dated November 16, 2012, the Claimant was directed to attend a formal investigation on a charge that the Claimant had violated the Carrier’s Standards of Excellence and its Attendance Policy when he allegedly was absent on at least eleven occasions during a twelve-month period. The investigation was conducted, after two postponements, on March 5, 2013. By letter dated March 18, 2013, the Claimant was notified that he had been found guilty as charged, and that he was being dismissed from the Carrier’s service. The Organization thereafter filed a claim on the Claimant’s behalf, challenging the Carrier’s decision to discipline him. The Carrier denied the claim.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence in the record supports the finding that the Claimant was guilty as charged, because the Carrier has a right to expect regular attendance from its employees despite the existence of personal family problems or other extenuating circumstances, because the doctor's note about the illness of his fiancé's son relates only to two of the Claimant's absences that occurred in September 2012, because sick leave is not an exception that would excuse any absences under the Carrier's Attendance Policy, because the Claimant did not apply for FMLA leave, because there still would be at least eleven absences within twelve months on the Claimant's record even if the two September 2012 absences are not considered, because there is no merit to the Organization's arguments, and because the Claimant's dismissal was warranted and appropriate. The Organization contends that the instant claim should be sustained in its entirety even though there is no dispute that he was absent from work during 2012 in excess of the Carrier's Attendance Policy standard because the Claimant incurred a series of excused absences while experiencing several personal and family hardships, because most of the absences at issue occurred in connection with the illness of the son of the Claimant's fiancé and the Claimant's own personal health issues, and because the Carrier's decision to dismiss the Claimant without considering the mitigating circumstances was excessive, unwarranted, and in violation of the parties' Agreement.

The parties being unable to resolve their dispute, this matter came before this Board.

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 finding that the Claimant was guilty of violating the Carrier's Attendance Policy when he was absent on numerous occasions in the twelve-month period from December 12, 2011, until November 8, 2012. This Board has found on numerous occasions that the Carrier has a legitimate right to expect its employees to come to work on time and on a regular basis. This Claimant was clearly guilty of violating the Carrier's rules that prohibit excessive absenteeism.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The record reveals that the Claimant in this case has been employed by the Carrier since 1992. Although he had some problems ten years ago, the record reveals that these Attendance Policy violations began in 2010 and continued through his discharge. The Claimant and family members, as well as a family member of his fiancé, all were suffering from health-related issues. The record is clear that the Claimant did not apply for FMLA or attempt to receive any assistance whatsoever from the Carrier. However, given the lengthy seniority of this Claimant and the fact that the Claimant testified before the Board that he has now put his problems behind him, this Board must find that the Carrier acted unreasonably and arbitrarily when it terminated the Claimant's employment. The Claimant's termination is hereby reduced to a lengthy disciplinary suspension. The Claimant shall be returned to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy suspension in response to

his excessive absenteeism and other Attendance Policy violations. The Claimant is returned to work on a last-chance basis and must demonstrate that he is capable of serving the Carrier on a regular basis.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be returned to work but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 7/9/14



CARRIER MEMBER

DATED: 7/2/14