

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. 301

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

1. The discipline (dismissal) imposed on Mr. W. Vile by letter dated March 28, 2013 for alleged excessive absenteeism on October 3, 15, and 23, 2012 in connection with Amtrak’s National System Attendance Policy was harsh, excessive, arbitrary and capricious (System File NEC-BMWE-SD-5143D).
2. As a consequence of the violation referred to in Part 1 above, the Claimant shall be reinstated to service with seniority and all rights and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”

FINDINGS:

By letter dated November 9, 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 in connection with his alleged absences during a thirty-day period ending on October 30, 2012. The investigation was conducted, after two postponements, on March 14, 2013. By letter dated March 28, 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 even if an employee may have a justifiable reason for individual absences, because none of dates specified in the charge are supported by the medical documentation that the Claimant supplied, because the Claimant's discipline history demonstrates that he is unable or unwilling to change his behavior, and because the Claimant's dismissal was warranted and appropriate. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to properly consider any valid reasons the Claimant may have had for missing part or all of work, because the Claimant had a valid medical reason for his absences, because a proven illness is not a proper basis for discipline, and because the discipline imposed was harsh, excessive, arbitrary, capricious, and without just cause.

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, late, or departed early on at least three occasions during the thirty-day period between September 30 and October 30, 2012. The Claimant's actions on October 3, 15, and 23 make it clear that the Claimant was guilty of violating the rules prohibiting excess 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 Claimant in this case had accumulated thirty-eight years of seniority with the Carrier. The record reveals that the Claimant was suffering from a medical condition which made it difficult for him to come to work and which was clearly responsible for the absences that caused this latest violation of the Carrier's Attendance Policy. The Claimant stated that his medical condition was "out of control."

This Board is aware that the Claimant had accumulated a fairly poor disciplinary record with respect to his attendance in 2010 and 2011, preceding this latest incident in 2012. However, given his medical condition and his lengthy seniority, this Board must find that the Carrier acted unreasonably, arbitrarily, and capriciously when it terminated the Claimant's employment. We find that the Claimant shall be reinstated to service but without back pay. The period of time that the Claimant was off shall be considered a lengthy disciplinary suspension. The Claimant was previously on a final warning of impending dismissal and he shall remain on that final warning.

AWARD:

The claim is sustained in part and denied in part. The Claimant shall be reinstated to service 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