

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 31
Docket No. NEC-BMWE-SD-1349D

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

By letter dated May 29, 1985, Claimant K. Duffin was notified to attend a hearing in connection with the following charge:

Excessive absenteeism in that you were absent on April 29, May 13 and May 22, 1985.

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

The Organization initially contends that the charge is not timely with respect to two of the cited dates. Rule 71 of the controlling agreement requires that the Carrier schedule a hearing within 30 days of Carrier's first knowledge of an employee's possible involvement in a chargeable incident. Because the hearing originally was scheduled for June 13, 1985, the Organization asserts that the charge relative to the first two cited dates is not timely.

The Organization further argues that the excessive absenteeism charge conflicts with the October 26, 1976, Absenteeism Agreement; this agreement defines authorized absences and establishes progressive discipline for unauthorized absences. The Organization contends that Carrier cannot require an employee to report absences and the reasons for the absences under the absenteeism agreement, then use that information to charge the employee under another agreement. Moreover, two of Claimant's absences were caused by

personal illness, and the third by a family emergency for which Claimant received verbal permission to return home. These absences were legitimate and authorized. The Organization therefore contends that the claim should be sustained.

The Carrier asserts that the Organization failed to meet the
time limits imposed by Rule 74 of the agreement when it appealed Carrier's denial of the claim after the sixty-day period for filing such appeals had expired. Carrier argues that this is a fatal procedural flaw requiring denial of the claim. Carrier then disputes the Organization's assertion that Carrier violated Rule 71's time limit. Carrier points out that the three cited dates constitute a period of excessive absenteeism; the last date is within thirty days of the scheduled hearing, so the charge notice was timely.

Carrier further contends that there is no provision in any agreement that requires it to charge and discipline an employee who has been excessively absent under the absenteeism agreement; this agreement was not intended to address excessive absenteeism. Carrier argues that it consistently applies the absenteeism agreement to cases of unauthorized absence, not to excessive absenteeism.

Carrier also asserts that Claimant admitted his absence on the dates in question. Claimant's admission and the evidentiary record provide sufficient probative evidence of Claimant's guilt. Carrier argues that neither alleged illness nor an alleged family emergency mitigate that guilt. Carrier contends that the assessed discipline was commensurate with the offense and Claimant's prior record; the discipline was not arbitrary, capricious, or excessive. Carrier therefore argues that the claim should be denied in its entirety.

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 excessive absenteeism. Although the hearing was not scheduled until June 13, 1985, that date is within 30 days of the last date of absenteeism that constitutes the excessive absenteeism. This Board has found in the past that as long as the hearing is scheduled within 30 days of the last day, it will be sufficient to comply with the requirements of Rule 71.

Moreover, this Board has found on numerous cases in the past that three days of absenteeism within a 30-day period can constitute excessive absenteeism. Hence, the Claimant was properly found guilty.

Once this Board has determined whether a claimant has been properly found guilty, we next turn our attention to the nature of the discipline imposed. The Claimant had previously received a letter of warning for excessive absenteeism in February 1985. Consequently, it was not unreasonable, arbitrary, or capricious for the Carrier to impose a 30-day suspension on the Claimant as a result of this discipline.

Award:

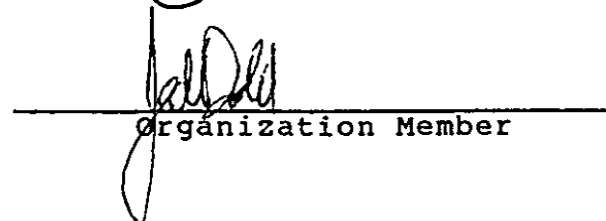
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 9-28-87