

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. 312

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

1. The Carrier’s discipline (termination in all capacities) of Mr. S. Hahn, issued by letter dated August 28, 2014, in connection with his alleged failure to comply with the Carrier’s attendance-related policies was arbitrary, capricious and unreasonable (System File D01001514-1/BMWE-580D NRP).
2. As a consequence of the Carrier’s violation referred to in Part 1 above, Mr. S. Hahn shall have his record cleared of the charges and results therefrom, be compensated for any lost work opportunity or benefits resulting from the Carrier’s actions and be immediately reinstated to the Carrier’s service, with all rights and benefits associated therewith.”

FINDINGS:

By notice dated May 29, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s National System Attendance Policy based on a record of excessive absenteeism. The investigation was conducted, after a postponement, on August 7, 2014. Due to a recording malfunction that prevented the creation of a hearing transcript, the investigation was conducted a second time on August 21, 2014. By letter dated August 28, 2014, 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 the Organization's appeal was untimely and the claim therefore is time-barred, because substantial evidence in the record supports the finding that the Claimant was guilty as charged, because of the Claimant's record of prior discipline for excessive absenteeism including a suspension and signed waiver agreement just weeks before the instant charges were issued, and because the investigation was correctly reconvened due to the malfunction of the recording device. The Organization contends that the instant claim should be sustained in its entirety because the Carrier failed to provide the Claimant with a fair and impartial investigation, because the Carrier failed to meet its burden of proof, because the Claimant was accused of absences without permission on dates he was off with Carrier approval due to medical reasons, and because the Carrier was well aware of the Claimant's severe and debilitating medical problems.

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

There is no need to address the procedural arguments.

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 in violation of the Carrier's attendance policy. The record reveals that the Claimant failed to call off and failed to protect his assignment on May 27, 28, and 29, 2014. Previous to that, the Claimant had been absent fifteen days in less than a twelve-month period.

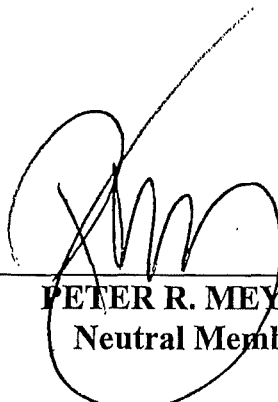
Once this Board has determined that there is sufficient evidence in the record to

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.

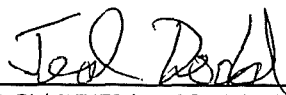
It is fundamental that an employee must come to work on a regular basis. The Claimant in this case had been issued several disciplinary actions with respect to his attendance, including a reprimand and a fifteen-day suspension. He also had received a final warning. Given that poor record of attendance and the Claimant's previous disciplinary background, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant in this case. Therefore, the claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 9/27/16



CARRIER MEMBER
DATED: September 19, 2016 133 pms 51