

BEFORE SPECIAL BOARD OF ADJUSTMENT 986

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

Case No. 314

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

1. The dismissal of Mr. J. McNamee effective April 6, 2015 for alleged ‘Excessive absenteeism’ (on specific dates) during the period from September 29 through and including December 8, 2014 was harsh, excessive, arbitrary and capricious (System File NEC-BMWE-SD-5337D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant shall be reinstated to service with all benefits and seniority rights unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss suffered.”

FINDINGS:

By notice dated December 24, 2014, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s National System Attendance Policy and pertinent sections of the Carrier’s Standards of Excellence based on a record of excessive absenteeism. The investigation was conducted, after a postponement, on March 25, 2015. By letter dated April 1, 2015, 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 there is no merit or mitigating value to the Organization's assertions, and because the penalty of discharge was warranted. The Organization contends that the instant claim should be sustained in its entirety because the absences at issue were incurred due to the medical condition of the Claimant's wife, because the Claimant filed for FMLA leave but his wife's doctor did not complete the application until after the doctor had a diagnosis for the Claimant's wife, because the Carrier's National System Attendance Policy unfairly and unreasonably fails to take into account that employees need to be excused from the discipline process due to illness, and because the discipline imposed was harsh, excessive, arbitrary and capricious under the circumstances.

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 excessive absenteeism in the fall of 2014. The record reveals that the Claimant was absent without leave on nine occasions between September 29, 2014, and December 8, 2014. That number of absences is a violation of the Carrier's Attendance Policy and subjects an employee to disciplinary action.

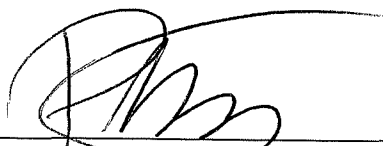
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary,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

The Claimant in this case has compiled a terrible record with respect to


absenteeism. The Claimant received verbal counseling in 2009, a written letter of instruction in 2009, a reprimand in 2010, a ten-day suspension in 2011, and a termination in 2012, which was reduced to a final warning. Given that disciplinary background and the continual excessive absenteeism of which the Claimant was clearly found guilty in this case, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's employment. Therefore, the claim will be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 9/1/16



CARRIER MEMBER

DATED: September 1, 2016 ³ _{pm est}