

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. 318

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

1. The dismissal of Bridge and Building (B&B) Mechanic A. Moschitti for violation of Amtrak’s Standards of Excellence involving Attending to Duties and failure to comply with Amtrak’s National System Attendance Policy as a result of his absences from duty on July 25, 29, 30, 2013; August 2, 6, 7, 8, 9, 12, 13, 2013; September 7, 13, 16, 17, 18, 19, 25, 28, 2013; and October 5, 7, and 10, 2013 is excessive, unreasonable and arbitrary (System File NEC-BMWE-SD-5353D AMT).
2. As a consequence of the violation referred to in Part 1 above, Claimant Moschitti shall have the charges withdrawn, be reinstated to service and allowed all losses.”

FINDINGS:

By notice dated October 25, 2013, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier’s Standards of Excellence relating to Attending to Duties and had violated the Carrier’s National System Attendance Policy in connection with alleged instances of absenteeism during the period from July 25 through October 19, 2013. The investigation was initiated, after eight postponements, on February 20, 2014, and then was recessed and continued to completion on May 21, 2015. By letter dated May 29, 2015, the Claimant was notified that he had been found guilty as charged and 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 Claimant was afforded a fair and impartial investigation, 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 is commensurate with the proven offense. The Organization contends that the instant claim should be sustained in its entirety because the Carrier's dismissal of the Claimant was without just cause, because the Carrier admits that the Claimant's FMLA leave applied during the time period in question, because an inexperienced foreman coded the absences in question as excused or unexcused without knowledge of the Claimant's medical condition and the specific terms of his FMLA leave, because the Claimant's condition did in fact incapacitate him on the dates in question, because the Carrier let months go by without giving Claimant any notice that it considered some of his absences to be unexcused, and because it would be unjust to allow the Carrier's disingenuous dismissal of the Claimant to stand 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 violating the Carrier's Attendance Rules in July, August, September, and October of 2013. The record reveals that the Claimant accumulated seven occurrences of absence in the thirty-day period prior to and including October 16, 2013, as well as

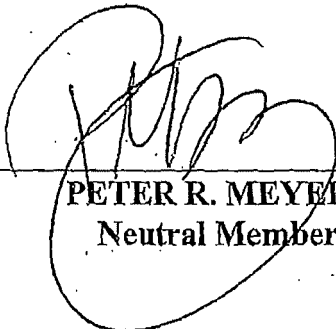
twelve occurrences of absence in the ninety-day period prior to October 16, 2013. All of those absences were unexcused. The Claimant did take off some days and was excused under FMLA; but on all the days that he did not call in, the absence was listed as a normal unexcused absence. The Claimant admitted that he did not call in on the days that he was listed as being unexcused. When one totals up all of the absences, it is clear that the Claimant violated the Attendance Policy, which states that three occurrences in a thirty-day period and five occurrences in a ninety-day period constitute 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 Claimant's record reveals that this is his third discipline for absenteeism in less than four years. He previously was charged with being absent on seventy-one days prior to December 29, 2009. In addition, he was charged with being absent on seventy days prior to February 5, 2010. The Claimant received a ten-day suspension and a final warning on that second occasion. Given the seriousness of the Claimant's wrongdoing in this case, coupled with his previous disciplinary background, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Claimant's appointment in this case. Therefore, this claim must be denied.

AWARD:

The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER

DATED: 1/30/17



CARRIER MEMBER

DATED: January 30, 2017 @ 2⁵² pm