

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. 332****STATEMENT OF CLAIM:**

Claim challenging the Carrier's dismissal of Claimant Kevin Lowenadler

FINDINGS:

By notice dated May 22, 2018, the Claimant was directed to attend a formal investigation on charges that the Claimant had violated the Carrier's Standards of Excellence pertaining to Attending to Duties, as well as Carrier's National System Attendance Policy, in connection with a review of the Claimant's attendance record for the twelve-month period ending July 23, 2018, showing that Claimant had been absent eleven days during that period. The investigation was conducted, after a postponement, on August 23, 2018. By letter dated August 29, 2018, the Claimant was notified that he had been found guilty as charged. By separate letter dated August 29, 2018, the Claimant was notified 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 of guilt, because the Claimant was afforded a fair and impartial investigation, because there is no merit or mitigating value

to the Organization's assertions, and because the discipline imposed is commensurate with the seriousness of the proven offense. The Organization contends that the instant claim should be sustained in its entirety because the Claimant supplied the Carrier with medical documentation accounting for three of the absences at issue, because these three absences therefore should be considered excused and removed from the Claimant's attendance record, and because this would put the Claimant below the threshold of violating the Attendance Policy.

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 eleven days in a twelve-month period from December 7, 2017, through July 23, 2018. That number of absences in that twelve-month period clearly is excessive absenteeism under the Carrier's policy and definitely subjected the Claimant 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's attendance record includes two written reprimands by Waiver Agreement and a ten-day suspension by Waiver Agreement for excessive absenteeism. The Waiver Agreement was dated December 13, 2017, and carried with it a ten-day

suspension, five served and five deferred for one year, as well as a final warning concerning attendance if he was found guilty of any further violations within five years. The Claimant committed the most recent offense of eleven absences in twelve months while he was subject to that five-year final warning.


This Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it issued the discharge to the Claimant for his most recent excessive absenteeism offense. Therefore, this claim must be denied.

AWARD:

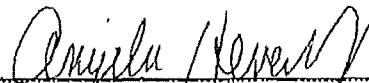
The claim is denied.



PETER R. MEYERS
Neutral Member



ORGANIZATION MEMBER
DATED: 11/12/2019



CARRIER MEMBER
DATED: 11-12-19