

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 34

Docket No. NEC-BMWE-SD-1367D

PARTIES: Brotherhood of Maintenance of Way Employees

TO :

DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated July 12, 1985, Claimant W.C. Trader was notified to attend a hearing in connection with the following charge:

Violation of the following Amtrak Rules of Conduct:

- (1) Rule 'K', that part which reads, "Employees must . . . comply with instruction from their supervisor", in that you failed to return to duty or to furnish medical certification pertaining to your absence as directed in our letter of April 8, 1985.
- (2) Rule 'L', that part which reads, "Employees shall not . . . be absent from duty . . . without proper authority," in that you have been absent without proper authority from May 8, 1985, until May 16, 1985.

After three postponements, the hearing was held on August 22, 1985. As a result of the hearing, Claimant was assessed a thirty-workday suspension. The Organization thereafter filed a claim on Claimant's behalf, challenging the suspension.

The Organization contends that Carrier improperly has engaged in disparate treatment of employees. The Organization points out that a white employee who was off due to disability from September 1983 until July 1985 was not required to make monthly reports to Carrier about his medical condition. Claimant, a black employee, was required to make such monthly reports. The Organization asserts that this raises a presumption of discrimination in Carrier's treatment of two similarly situated employees. The Organization further argues that in November 1984, Carrier attempted to discipline Claimant for a similar offense; Carrier's conduct amounts to harassment of Claimant because

of the time loss resulting from Claimant's injury.

The Organization also asserts that Claimant made a reasonable effort to comply with instructions. Claimant entrusted his attorney and physician with filing timely reports; when Claimant became aware of a problem with the reports, he immediately attempted to notify Carrier of his medical condition. The Organization contends that Claimant's actions show that he complied with the request of his supervisor. The Organization therefore asserts that the claim should be sustained.

The Carrier initially argues that this claim suffers from a fatal procedural flaw. Claimant did not appeal the assessed discipline within the fifteen-day time period set forth in Rule 74 of the controlling agreement. Carrier argues that the claim should be denied for this reason alone.

Carrier also contends that Claimant admittedly did not submit medical certification to Carrier for May 1985, nor could Claimant provide evidence that certification was given Carrier by anyone else on Claimant's behalf. Carrier argues that at his own peril, Claimant relied on other persons to supply timely medical documentation.

Carrier next contends that an allegation of discrimination is not a proper defense in a discipline case. Carrier points out, however, that the white employee mentioned by the Organization did promptly provide Carrier with medical documentation; Carrier therefore had no need to seek additional or continuing documentation from him. Carrier asserts that there is no merit to the Organization's contention of discriminatory treatment. Carrier also argues that the medical report dated June 1985 is nothing more than a belated attempt to comply with Carrier's instructions; it does not mitigate Claimant's guilt.

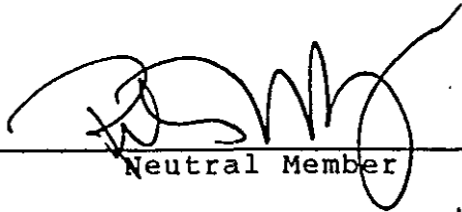
Carrier asserts that because of the seriousness of the offense and Claimant's prior record, the assessed discipline was not arbitrary, capricious, or excessive. Carrier therefore argues that the claim should be denied.

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 a Rule L and Rule K violation. Although there may be some minor procedural problems with the processing of the grievance on the part of the Organization, this Board finds that, irrespective of those problems, the Carrier has presented sufficient evidence that the Claimant did not return to duty on the required date and that he did not submit the required medical documentation to support his absence. Hence, there was sufficient evidence in the record to find the Claimant guilty.

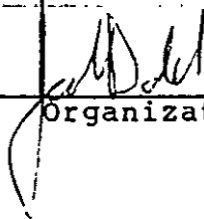
Once this Board has determined that there is sufficient evidence in the record to support a guilty finding, we next turn our attention to the type of discipline imposed. This Board will normally not set aside a carrier's imposition of discipline unless we find it to be unreasonable, arbitrary, or capricious. In this case, this Board cannot find that a 30-workday suspension was unreasonable. Hence, the claim must be denied.

Award:

Claim denied.



Neutral Member

Carrier Member

Organization MemberDate: 9-28-87