

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 36
Docket No. NEC-BMWE-SD-1585D

PARTIES: Brotherhood of Maintenance of Way Employees
TO :
DISPUTE: National Railroad Passenger Corporation (Amtrak)

FINDINGS:

By letter dated June 3, 1986, Claimant W.C. Bryant was notified to attend a hearing on the following charge:

Excessive absenteeism in that you were absent in whole or in part on the following dates after being issued a letter of warning:

May 14, 19, 20, 22 and June 2 and 3, 1986.

After two postponements, the hearing was held in absentia on July 29, 1986. As a result of the hearing, Claimant was assessed a ten-day suspension. The Organization subsequently file a claim on Claimant's behalf, challenging the suspension.

The Organization initially objects to Carrier's holding the hearing in absentia. The Organization asserts that any hearing in absentia deprives the accused employee of his right to a fair and impartial hearing, as set forth in Rule 68 of the controlling agreement. Before the hearing took place, Claimant had obtained employment with the Carrier in New York; the hearing was conducted by Claimant's former unit in Odenton, Maryland. The Organization argues that Carrier's failure to change venue to New York and its decision to hold the hearing in absentia are fatal procedural flaws.

The Organization also contends that the October 26, 1976, Absenteeism Agreement governs the absenteeism issue. That agreement defines authorized absences; the Organization argues that absences authorized under the absenteeism agreement cannot be used to support a charge of excessive absenteeism. The Organization further contends

that Carrier does not apply the excessive absenteeism charge in a fair manner; other employees who are in technical violation of the absenteeism guidelines have not been so charged. The Organization therefore contends that Carrier's application of this charge is arbitrary and capricious. The Organization also points out that Claimant was paid for five hours of service on May 14, 1986, and over nine hours of service on May 19 and 20, 1986; these dates should not be included in the charge. The Organization therefore argues that the claim should be sustained.

Carrier contends that there is no provision in any agreement that requires it to charge employees who have been excessively absent under the provisions of the absenteeism agreement; this agreement was not intended to address excessive absenteeism. Carrier asserts that it has consistently applied the absenteeism agreement to cases of unauthorized absence, not to cases of excessive absenteeism.

Carrier also argues that there is no provision in the controlling agreement that provides for a venue change when an employee has exercised seniority to obtain a position in another district. Carrier further points out that Claimant never requested such a change and indicated that he would attend the hearing on July 29, 1986. Carrier asserts that it did not violate Claimant's right to a fair and impartial hearing.

Carrier goes on to contend that on May 14, 19, and 20, 1986, Claimant was absent for part of his regularly assigned tour of duty. These dates are properly included in the charge. Carrier further argues that the assessed discipline was not arbitrary, capricious, or excessive. Carrier points out that the other employees who were

similarly absent, cited by the Organization, worked in different districts and therefore were subject to different absenteeism policy; their cases were handled in accordance with the appropriate policy. Carrier argues that the discipline assessed Claimant was commensurate with the nature of the offense and Claimant's prior record. Carrier contends that the claim should be denied in its entirety.

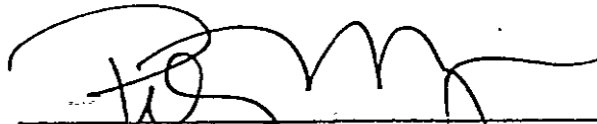
This Board has reviewed the evidence and testimony in this case, and we find that there is no basis to the procedural objections raised by the Organization.

With respect to the merits, this Board finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of excessive absenteeism. This Board has previously found that the Carrier has the right to discipline employees for excessive absenteeism and that three incidents of absenteeism in a one-month period is sufficient to constitute excessive absenteeism. With respect to the argument of the Organization, even if the dates of May 14, 19, and 20 are removed from the charge, the Claimant was still absent on three days, namely, May 22 and June 2 and 3, within the 30-day period. Hence, he was properly found guilty.

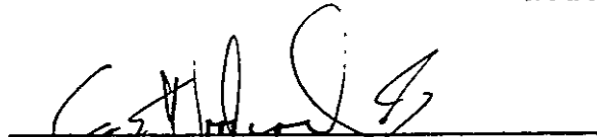
Once this Board has determined that a claimant was properly found guilty, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find it to be unreasonable, arbitrary, or capricious. In this case, the Claimant received a letter of warning with respect to absenteeism on April 30, 1986. Consequently, it was not unreasonable for the Carrier to impose a ten-workday suspension on the Claimant for the offense in this case.

Award:

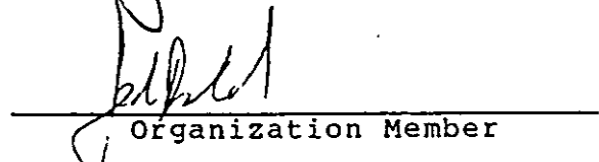
Claim denied.



Neutral Member



Carrier Member



Organization Member

Date: 9-28-87