

SPECIAL BOARD OF ADJUSTMENT NO. 986

Case No. 49

Docket No. NEC-BMWE-SD-1911D

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

FINDINGS:

Claimant J.O. Clark was employed as a trackman by Carrier at its Wilmington Shop; Claimant has a seniority date of August 9, 1977. On March 3, 1987, Claimant was notified to attend an investigation in connection with the charge:

Excessive absenteeism in that you were absent on 02/10/87, 03/01/87 and 03/05/87.

After several postponements, the hearing was held on September 10, 1987; Claimant did not attend the hearing, although his duly authorized representative was present. As a result of the hearing, Claimant was dismissed from all service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal from service.

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 on the dates charged in the investigation.

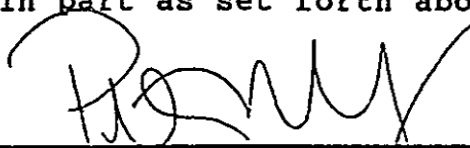
Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. In this case, although the Claimant was admittedly absent on the days in question, and he had an extremely poor record dating back several years, there are a number of circumstances that make it evident that dismissal was an unreasonable punishment in this case. The record is clear that the Claimant's

wife contracted breast cancer in 1983 and went through a great deal of treatment over the three years that she suffered from the disease prior to her death. During that period, the Claimant was charged with the responsibility of caring for her, as well as performing his job. He was disciplined on several occasions, but his record did not show the improvement that the Carrier expected. Shortly prior to the incident in question here, the Claimant's wife died. At the public hearing, the Claimant made it clear that his job was extremely important to him and that since he no longer had the responsibility of caring for his sick wife, he would have no problem making it to work on a regular basis. This Board must take that testimony and those circumstances into consideration. Also, the Claimant had over 10 years of service with the Carrier prior to his dismissal.

This Board will not normally set aside a carrier's imposition of discipline unless we find it to be unreasonable, arbitrary, or capricious. In this case, we find that the dismissal under the circumstances was an unreasonable action to be taken by the Carrier. We therefore reinstate the Claimant to service and order that the discipline be reduced to a 120-day suspension. The Claimant is to be made whole for all back pay for the time that he was off over 120 days. This Board also orders that the Carrier assist the Claimant in entering into a counselling program where he can receive aid in dealing with the recent death of his wife and the problems that he has encountered in coming to work.

Award:

Claim sustained in part as set forth above.

  
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Neutral Member

  
\_\_\_\_\_  
Carrier Member

  
\_\_\_\_\_  
Organization Member

Date: 4-12-88