

Carrier's Policy for Employee Performance Accountability (PEPA) provides that five disciplinary incidents of any kind within a 12-month period will subject the employee to dismissal.

The facts of this case are not in dispute. The Carrier generates a report each month showing employees who are not in compliance with its attendance guidelines, and monitors employee attendance for a three-month rolling review period. Claimant was charged for his attendance during October, November and December 2003. For that three-month period, Claimant was allowed to be off 11.5 weekdays and four weekend days. However, he was off 12 weekdays and eight weekend days. Terry L. Keane, Carrier Terminal Manager at Vancouver, Washington, testified at the investigation that he previously had numerous conversations with Claimant regarding availability and the attendance guidelines. He stated that during those conversations he pointed out alternatives out to Claimant, including the availability of an Employee Assistance Program (EAP) manager to assist with any issues causing attendance problems and to determine whether Claimant was entitled to medical leave.

At the investigation, Claimant did not take exception to the Carrier's evidence establishing his attendance. Claimant did, however, contend he had only recently become aware that his interpretation of the attendance guidelines was incorrect, and that he consequently tried to correct his performance to comply with the guidelines. He acknowledged, however, that he had met previously with Carrier managers concerning the attendance guidelines, although he could not recall on how many occasions he had done so.

Claimant also testified that his father was dying, and he had also just recently learned that he could request Family Medical Leave Act (FMLA) leave to deal with the situation. He added that he had begun to complete the FMLA paperwork. He also stated that he had been in touch with Carrier's EAP manager and begun a "dialogue" with him concerning attendance issues. Claimant acknowledged that he was "apparently" in violation of the attendance policy, but maintained that the matter had only recently been brought to his attention.

Claimant's personal record indicated that he had a formal reprimand in 2000 for failure to perform service as a full-time employee; 10 and 20-day record suspensions in 2001 for attendance guideline violations; and a 20-day record suspension in 2003 for violation of attendance guidelines. Claimant also had three disciplinary incidents involving failure to protect his assignment, and three incidents, two in September 2003 and one in October 2003, of missed calls. Claimant's record also indicates that he was dismissed on March 20, 2001 for failure to protect call, and reinstated on a leniency basis, effective August 13, 2001, with a three-year probationary period.

The Carrier asserts that there is no dispute that Claimant failed to maintain his status as a full-time employee, as Claimant admitted the relevant facts. The Carrier states that as there are no procedural issues and the facts are undisputed, the Organization is left

to make extraneous arguments and question the appropriateness of the discipline. These arguments, the Carrier urges, should be rejected.

The Carrier stresses that Claimant was quite familiar with the Carrier's attendance guidelines, having had numerous discussions on this issue with supervisors, and discipline for violations of the guidelines four previous times, the last only months before the instant violations. The Carrier also notes that Claimant's attendance failures occurred disproportionately on weekends.

The Carrier further notes that while Claimant offered his father's illness as an excuse for his situation, no evidence was presented to substantiate that such a circumstance actually existed. Further, the Carrier points out, Claimant made no effort to apply for an FMLA leave prior to being cited for this investigation.

As for the Organization's argument concerning Carrier's denial of Claimant's transfer request, the Carrier notes that this issue was not raised at the hearing or in the initial appeal process. In any event, the Carrier points out, it is the Carrier's prerogative to grant or deny such a request. The Carrier states that Claimant's record demonstrates that he was a poor employee, and allowing him to transfer would simply have allowed him to take his poor work habits to another location.

Finally, the Carrier notes that Claimant was counseled, and informed of FMLA and EAP alternatives, but he chose not to help himself. The Carrier applied progressive discipline, it notes, including a prior dismissal and leniency reinstatement. The discipline assessed herein, the Carrier concludes, conforms to its Policy for Employee Performance Accountability (PEPA), and was warranted. Therefore, the Carrier urges that the claim be denied.

The Organization concedes that during the months of October, November and December 2003 Claimant was absent twelve (12) weekdays and eight (8) weekend days. However, the Organization states, the Carrier did not take into consideration Claimant's medical issues, including the fact that his father had terminal cancer and lived in another city, as Claimant had advised a local Carrier officer. In addition, the Organization notes, Claimant made a formal request to transfer to Los Angeles, where his father lived, but the request was denied, even though other employees' similar requests have been approved. The Organization concludes that the Carrier demonstrated an unwarranted lack of understanding of Claimant's personal situation, perhaps as the result of some personal animosity, and the claim should be sustained.

The Board has carefully reviewed the record in its entirety. The Organization raises no procedural objections to the discipline assessed against Claimant. On the merits, Claimant admitted that he was absent as alleged, and there is no question that he was in violation of the Carrier's attendance guidelines. While the Organization contends that Claimant was the victim of special circumstances and should have been granted consideration by the Carrier, we cannot agree. Claimant asserted that his father was dying, but produced nothing to substantiate that claim and made no effort to apply for the

FMLA leave that might have been available in that situation. Claimant also contended that he was unfamiliar with the Carrier's attendance guidelines, a completely untenable claim given that, as he acknowledged, he had been counseled on numerous occasions and subjected to prior discipline. Thus, there is nothing to excuse Claimant's absences, and his guilt has been proven by substantial evidence.

With respect to the penalty of dismissal, Claimant had been counseled and disciplined on numerous occasions about his attendance, all, apparently, to no avail. The discipline assessed cannot be considered unreasonable or arbitrary under the circumstances, and the claim must be denied.

AWARD

Claim denied.


JACALYN J. ZIMMERMAN
Neutral Member


ROGER BOLDRA
Carrier Member


J.L. SCHOLLMAYER
Organization Member

Dated this 31st day of March, 2009.