

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation violated the current controlling agreement, Rule 6, but not limited thereto, when it dismissed Machinist R. S. Stabliewski from service on July 8, 1983.

2. That the Carrier be ordered to restore Machinist R. S. Stabliewski to service with seniority unimpaired and compensate him for all pay lost up to time of restoration to service at the applicable Machinist rate of pay.

3. That Machinists R. S. Stabliewski be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost during this period in accordance with Rule 7-A-1 (e) of the prevailing Agreement effective May 1, 1979.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

On July 8, 1983, the Claimant, Machinist R. S. Stabliewski, a Machinist with thirteen years of service, was dismissed from service by the Carrier after a hearing and investigation on the charge of excessive absenteeism. The Organization filed a claim on the Claimant's behalf, challenging the discharge.

The Organization contends that the Carrier acted in an arbitrary and capricious manner when it dismissed the Claimant. The Claimant's documented absences are not excessive, amounting to twenty-five and one-half hours out of 103 working days.

The Organization further argues that under Rule 6-A-3(a), the Carrier should not have considered the Claimant's attendance record for the period prior to thirty days before the charge accrued. Rule 6-A-3(a) provides: "The trial shall be scheduled to begin within thirty (3) calendar days from the date the employee's General Foreman or equivalent officer had knowledge of the employee's involvement."

The Organization also points out that the Carrier never established an attendance norm. Without a norm, "excessive" attendance cannot be determined.

Because the Carrier did not prove its charge, the Organization contends that the claim should be sustained and the Claimant reinstated with compensation for lost time and unimpaired rights and benefits.

The Carrier contends that the record contains substantial, credible evidence of the Claimant's guilt. His documented absences and previous attendance record constitute excessive absenteeism. Because absenteeism is a serious offense, it warrants serious discipline; the Claimant's dismissal, therefore, was justified.

The Carrier further argues that to prove a charge of excessive absenteeism, it must show excessive absences for a protracted time period. It was, therefore, appropriate for the Carrier to consider the Claimant's record beyond the thirty-day limit in Rule 6-A-3(a). The Claimant was not denied his due process rights, but rather received a fair and impartial hearing.

Should this Board sustain the claim, however, the Carrier argues that the Claimant is not entitled to the requested remedy. Recovery is limited by prior decisions and Rule 7-A-1(e), which states that any other compensation earned while the Employee is out of service shall be deducted from the Award.

Finally the Carrier contends that the claim is without merit and should be denied.

This Board has reviewed all of the evidence and testimony in this case, as well as heard the arguments of the Claimant and his Representative at a Referee Hearing, and it finds that there is substantial, credible evidence of the Claimant's guilt of the offense of excessive absenteeism sufficient to warrant disciplinary action by the Carrier.

This Board rejects the Organization's argument that the Carrier should not have considered the Claimant's attendance record for the period prior to thirty days before the charge accrued. Excessive absenteeism is, by its very essence, a cumulative infraction, and the Carrier must prove that the Claimant was absent on an excessive number of days over a protracted period. As this Board held in Award No. 8546:

"Excessive absenteeism necessarily occurs over a somewhat extended period of time. If the Organization's position were sustained, however, excessive absenteeism could never be the subject of an investigation, something obviously not intended by the parties. From the very nature of the offense each day of the unauthorized absence is a new straw on the camel's back until the breaking point is reached."

Hence, the Carrier was justified in basing the charge on a period in excess of thirty days. The hearing was scheduled within thirty days of the final "straw", or the last day of absenteeism.

This Board also finds that it is not necessary that the Carrier establish an attendance norm, as argued by the Organization. Each case of excessive absenteeism must be viewed in its own context. Certainly, there are different factual situations, and the Carrier cannot be bound by a rule that a certain number of absences equals excessive absenteeism and justifies discharge. This Board believes that the Organization would not even be satisfied with such a hard-and-fast rule. Excessive absenteeism must be viewed in the context of the particular situation in which it occurs in order for a penalty to be justly imposed.

Once this Board determines that the Claimant has committed an offense justifying discipline, we must review the penalty imposed by the Carrier. This Board has stated, on numerous occasions, that we will not second-guess the decision of a Carrier with respect to discipline unless it is arbitrary, unreasonable, or capricious.

In the case at hand, we are faced with the discharge of an Employee with over thirteen years of service with the Carrier. Although his record is not flawless, and it includes a charge of excessive absenteeism in 1979, with a ten-day deferred suspension, and a similar charge in 1981, with a record reprimand, as well as a five-day suspension in 1982 for improper performance of duties, and an absence without permission in 1983, leading to a sixty-day deferred suspension, this Claimant has never received, in his thirteen years of employment, a long suspension making it absolutely clear to him that if he continues to be excessively absent for work, he will be discharged by the Carrier. Since a thirteen-year Employee is entitled to progressive discipline, certainly it is unreasonable to terminate him without a lengthy suspension putting him on notice that his continued wrongdoing will lead to termination.

Consequently, this Board finds that the discipline imposed by the Carrier in this case was unreasonable under the circumstances, and the Board hereby orders the reinstatement of the Claimant. However, the Claimant will be entitled to no back pay, and the time off will be converted into a lengthy suspension. The Claimant is also hereby put on notice that continued absenteeism may result in more serious disciplinary action being taken against him, including discharge.

Form 1
Page 4

Award No. 10642
Docket No. 10717
2-CR-MA-'85

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1985.