

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10756
Docket No. 10794
2-B&O-SMW-'86

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

(Sheet Metal Workers' International Association

Parties to Dispute: (

(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That under the Current Agreement, Sheet Metal Worker Paul R. Henke, Pittsburgh, PA., was unjustly discharged from service on September 6, 1983.

2. That accordingly the Carrier be ordered to reinstate the aforementioned employee to service with all rights unimpaired, including seniority, vacation, health & welfare benefits and life insurance.

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 waived right of appearance at hearing thereon.

The Claimant, a Sheet Metal Worker, was instructed on July 28, 1983 to attend investigation under charges for excessive absenteeism, having been absent from work a total of 18 days between April 1, 1983 and June 30, 1983.

The investigation was convened on August 10, 1983. The Claimant was represented and he testified that he did not desire any witnesses.

The transcript of the investigation discloses that the Claimant was absent from duty seven days in April, one day in May and 10 days in June, a total of 18 days.

The Claimant's Supervisor testified that the Claimant did not request permission to be absent on any of the stated days.

When the Claimant was asked for his explanation for being absent seven days in April, his response was that he thought if he called in one hour before his normal quitting time he had permission to be absent. On further questioning he testified that he overslept on each of those seven days.

For May 31, 1983, he testified that he got his days mixed up and thought it was a holiday.

On nine of the days in June he testified that he overslept. On June 2, however, he was to see a doctor, and it is indicated in the testimony that he had permission to be absent that day for that purpose.

The Claimant's Supervisor thereafter testified that the Claimant's absences in April were discussed with him and basically told that his excuses were unjustifiable. He was warned that his absenteeism without justifiable cause was unacceptable, and informed that he must report to the Supervisor prior to or near the starting time of the day he was to be absent.

Immediately following the Supervisor's testimony, the Investigating Officer asked him if he had anything further to add. His response was:

"Yes, I think there was a misunderstanding between calling in with a reason for his absenteeism and calling in to get permission to be absent."

Following that response, the closing questions and answers in the transcript are:

"QUESTIONS TO MR. STARK BY INVESTIGATING OFFICER

- Q. Mr. Stark, do you have nay (sic) further questions of Mr. Harrall concerning this investigation?
- A. No. (Referee's note: Mr. Stark was the Claimant's representative, Mr. Harrall the supervisor.)

QUESTIONS TO MR. HENKE BY INVESTIGATING OFFICER

- Q. Mr. Henke, you stated previously that 17 of the days that you were absent in April, May and June that the reason was that you over slept, do you feel that is a justifiable reason for being absent from duty?
- A. I over slept, and I could not help that.
- Q. Mr. Henke, as an employee of the Railroad Company, do you fell (sic) responsible to report to duty on the regular scheduled days?
- A. Yes.
- Q. Mr. Henke, do you have anything further to add to your statement concerning this investigation?

A. Not at this time.

Q. Mr. Henke, do you have any questions of Mr. Harrall concerning this investigation?

A. No.

Q. Mr. Henke, do you recall any time in April that your absenteeism was discussed to you by Mr. Raupach or Mr. Harrall?

A. No.

Q. Mr. Henke, do you feel that this investigation has been conducted in a fair and impartial manner under the rules of the effective agreement?

A. Yes.

"QUESTIONS TO MR. STARK

Q. Mr. Stark, do you have any further questions of Mr. Harrall or Mr. Henke concerning this investigation?

A. No.

Q. Mr. Stark has this investigation been conducted in a fair and impartial manner under the rules of the effective (sic) agreement?

A. With all exceptions noted in the transcript, I will let the transcript speak for itself.

Hearing adjourned at 12:04 P.M."

The objections noted by the Claimant's representative were directed to days the Claimant reported late for work. Those objections were overruled.

The remaining objection was to the Claimant's absence in May while serving a 20-day suspension. The Investigating Officer sustained the objection that the Claimant's 20-day disciplinary suspension would be disregarded as a portion of the transcript.

In its appeal, the petitioner strongly relies upon the Supervisor's statement that he thought there was a misunderstanding between calling in with a reason and calling in to get permission to be absent, contending that the calling in by the Claimant the same day to report off, i.e., an hour before quitting time, was proper under the Agreement.

The Agreement provision to which the petitioner may have been referring was not cited anywhere in the record that we can find. The text in which the misunderstanding was mentioned by the Supervisor leads us to believe

that the matter was discussed with the Claimant during the interview in April about his absences. However, the matter was not pursued and the Claimant stated that he did not recall any time in April that his absenteeism was discussed, although the Supervisor previously testified that it was. Thus, we cannot say with precision that the matter was discussed - we are not the trier of the facts.

The Petitioner's additional position is that the Claimant has close to forty years of employment and since the transcript shows that he thought he was reporting off according to the Agreement, he has paid the penalty for his misunderstanding and should be restored to service.

On the other hand, the Board is of the view that an employee with nearly forty years of employment should be expected to know that permission to be absent from his assignment must ordinarily be secured prior to the regular starting time. That is a requirement stated in the transcript of the investigation and not disputed. That was surely not new to the Claimant for he had just finished serving a 20-day disciplinary suspension from May 2 through 27, 1983 for excessive absenteeism during the period January 1, 1983 and March 31, 1983 when he was absent 33 days.

The 20-day disciplinary suspension in May 1983 is apparently the one to which the Claimant's representative objected to and which the Investigating Officer ruled would not be part of the transcript. The Carrier referenced that suspension in the appeals procedure on the property. It has not been disputed that it was taken into consideration in determining the measure of discipline assessed in this instance.

On balance, however, our function in discipline cases is not to substitute our judgment for that of the Carrier, nor to decide the matter in accord with what we might have done had it been ours to determine. It is well known through a long tradition of arbitral restraint that we do not have that opportunity under existing appellate procedures in this industry. This approach is not of our making. It is so universally accepted and utilized by both parties that we cannot lightly cast it aside, notwithstanding the limitations upon the pursuit of facts in this case. Second Division Award 8280.

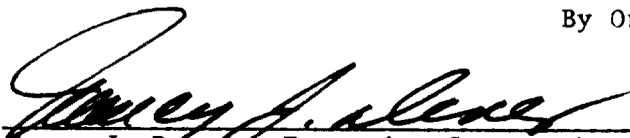
There is sufficient evidence to support the Carrier's decision. The Claimant's absenteeism was excessive, and to a greater extent than other similar cases appealed to this Board, considering the Claimant's past record of absenteeism.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devet - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.