

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10835
Docket No. 10892
2-SSR-MA-'86

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

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System Railroad (formerly Seaboard Coast Line Railroad) violated the applicable Agreement dated January 1, 1968, particularly Rule 32, but not limited thereto, when it unjustly suspended Machinist J. W. Willis from the service for 90 days (May 7, 1984 to August 4, 1984) account allegedly being chronically and excessively absent from his assignment.

2. That, accordingly, the Seaboard System Railroad be required to make claimant whole for all wages and benefits lost as result of the discipline assessed him and his personal record cleared of any and all reference made to the investigation conducted March 27, 1984 and subsequent discipline.

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 was charged with chronic and excessive absenteeism and absence from duty during the period August 17, 1983 to March 9, 1984 without sufficient medical evidence to justify such a lengthy absence.

The notice also stated that charge of excessive absenteeism resulted from absences incurred on twelve Fridays, one Thursday and three Mondays starting on January 21, 1983, specifically enumerated by the months in which they occurred through August 8, 1983.

The Investigation was conducted on March 27, 1984. The General Foreman who brought the charges testified that on August 3, 1983 he interviewed the Claimant about his absenteeism, having then been absent three Fridays in a row. He also testified that he had asked the Claimant if he had a problem he could help him with. The response, according to the General Foreman, was - in the Claimant's own words: "If you work every day they take out too many taxes."

The last day the Claimant worked in 1983 was August 16 and he did not work again until March 9, 1984, a period of more than twenty-eight weeks.

According to the transcript, the Claimant entered a hospital on or about August 22 for unspecified reasons. Eight weeks passed before the Claimant made any effort to notify the Carrier of his status. On October 12, 1983 the Shop Superintendent wrote the Claimant requesting the reasons for his continued absence and asked for some indication of when he might return to service. That letter was sent to the address of his former spouse due to conflicting records of his address. The Claimant stated he did not receive the letter until sometime in December. The date was not disclosed.

The General Foreman called on December 14 to inquire of the Claimant's status. The response from the Claimant was that his condition was uncertain and the date of his return to duty unknown. A medical report was requested from his personal physician and that was ultimately received.

The report was evaluated by the Carrier's Chief Medical Officer who stated that the report contained no medical justification beyond September 10, 1983. The Chief Medical Officer stated that he would be willing to examine the Claimant for evaluation of his ability to protect his assignment.

On January 16, 1984 the Carrier Representative contacted the Claimant to schedule him for the examination but the Claimant stated he had the flu and would not be available. He was contacted again on February 21 but again the Claimant said he would not be available. He was then scheduled for March 5. A follow-up letter confirming the date was addressed to the Claimant but he testified that it was not received until the morning of March 5. Later in the day he did report and was examined by the Chief Medical Officer.

The Chief Medical Officer's report of the examination to the Shop Superintendent was that the Claimant's prolonged absence since mid August 1983 was not adequately explained by reports submitted by the Claimant's personal physician and he was immediately approved for return to service as of that date. He reported for duty at 7:00 AM on March 9, 1984.

The Carrier is entitled to rely upon the conclusions of its Chief Medical Officer. The Claimant was notified on May 7, 1984 that he was suspended for a period of ninety days.

Before concluding this matter, we must address the contentions advanced by the Petitioner. They are: The Claimant was unjustly and improperly suspended. The Carrier did not prove the charges. The Claimant was unjustly and harshly dealt with in violation of Rule 32. The testimony exonerated the Claimant and he is innocent; was unavoidably absent due to illness, and requested and was granted a leave of absence from service account his sickness. The charges against him was the first time since October 1971 that the Carrier had formally objected to the Claimant's work habits and that progressive discipline was not followed.

We do observe that the Organization commented in its initial appeal of the discipline assessed that "In fact Machinist Willis has requested and been granted a leave of absence from the service account of his sickness." The Carrier rejected and denied that assertion, stating that the Claimant was not granted leave for his absence between the dates of August 17, 1983 and March 15, 1984.

If the Organization desired that assertion to be considered, it was incumbent upon it to submit proof that authority for the leave had indeed been granted.

The allegation that the charges in the Investigation was the first time since October 1971 that the Carrier had formally objected to the Claimant's work habits is refuted by letter dated February 25, 1983 addressed to the Claimant with copy to the Local Chairman and read into the record as Exhibit No. 18 of the transcript. In that letter the Claimant's excessive absenteeism was directed to his attention in pertinent part as follows:

1978 - Absent 94 work days
1979 - Absent 130 work days
1980 - Absent 174 work days
1981 - Absent 168 work days
1982 - Absent 124 work days

Had support for the other contentions been proved through explanation and supported by probative evidence, we might have been in position to evaluate and consider them. However, valid arguments in support have not been presented.

We have thoughtfully considered the Rules cited by the Organization in support of its position as related to the record in this dispute and while they may provide for excused absences, even for illness and other legitimate reasons, the number of reasons is not limitless. The Carrier is not precluded from disciplining the Claimant whose presence at work could not be counted on. The Claim as noticed to the Board is without merit.

Form 1
Page 4

Award No. 10835
Docket No. 10892
2-SSR-MA-'86

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1986.