

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That the Chicago and North Western Transportation Company (hereinafter referred to as the "Carrier") violated the provisions of the Joint Agreement, as amended July 1, 1979, specifically Rule 35, when, subsequent to an investigation which was neither fair nor impartial, it unjustly and improperly suspended California Avenue Maintenance Facility Machinist V. Perez (hereinafter referred to as the "Claimant") from service for a period of five (5) days.

2. That accordingly the Carrier compensate Machinist V. Perez for all wages lost while suspended, additionally, credit Machinist Perez for time lost for vacation and other benefit rights, and that record of the investigation proceedings, including reference to his unjust discipline, be expunged from his personal record.

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.

As a result of an investigation held on February 13, 1989 the Claimant was notified on March 1, 1989 that he was being assessed a five-day suspension for excessive absenteeism and tardiness. At the time, Claimant occupied a regular Machinist assignment on the first shift at the Carrier's California Avenue Maintenance Facility in Chicago, Illinois.

The Organization claims that the Carrier failed to properly apprise Claimant of the charges against him; that the Carrier violated the expressly stated time limit provision of Rule 35(c); that the Carrier failed to provide the Claimant with a fair and impartial investigation; and that the Carrier failed to sustain the investigation charge with probative evidence.

The Board notes that attendance for this Carrier is controlled by the Equipment Management Absentee Policy. This policy defines an occurrence as a continuous absence resulting from a single illness or single cause. Upon a certain number of occurrences, an employee is then placed on the formal discipline system. The discipline system provides for a five day suspension after the employee has received a letter of warning. Under the policy, the letter of warning is sent only to individuals guilty of "frequent or continued minor offenses who demonstrate and unwillingness to change." The policy sets out a plan for reforming good employees through conferences and review and without discipline. When this does not achieve its corrective goals, a letter of warning is issued. The letter of warning is followed by a five day suspension.

In response to the Organization's allegations, this Board finds that a review of the transcript clearly shows that the Claimant was able to provide testimony for the date of occurrence and further stated that he had had enough time to prepare. The Board also finds that the Carrier did provide Claimant with ample notice and a review of the transcript reveals that Claimant had a fair opportunity to defend himself. The record also establishes that the Carrier conducted interviews with the Claimant, advising him of the Carrier's expectation for attendance and discussing the Claimant's plans for improvement. A review of the transcript and of the Claimant's record shows that the Carrier continually notified the Claimant and reprimanded him for his absenteeism and tardiness. The aforementioned establishes to this Board's satisfaction that the Carrier did not violate the Claimant's procedural due process rights. Further, the Board rejects the Organization's argument that the burden was on the Carrier to request documentation from the Claimant regarding his absences. The Claimant, having knowledge of the Rule and its ramifications, could have presented documentation at the time of his absences. In this regard, the Claimant was given additional time during the investigation to accumulate documentation. The Board agrees with the Carrier that "calling in" and notifying the Carrier that he will not be reporting to work, does not relieve the Claimant of culpability for being absent; nor does it satisfy the requirement of the Carrier's rules for an employee to report to duty. The intent of requiring an employee to call in is to provide notice to the Carrier so that the assignment may be protected. In Second Division Award 11874 in which the same issue and Carrier were involved, this Board held that:

"The Board notes that while Rule 25(e) requires an employee to notify his supervisor of absences, such compliance does not excuse those absences. The intent of Rule 25(e) is to provide notice to the Carrier so that it may protect the assignment. Further, the absentee policy, being a no-fault policy, is oblivious to the reasons for an absence. The record does not provide any evidence to establish a written rule or agreement or past practice that excludes absence due to personal illness from the absentee policy. All such exclusions are listed in paragraph 2 of the policy.

The Board notes that the Organization does not argue that the Claimant was disciplined inconsistent with the absentee policy.... Carrier argues that for whatever reason, Claimant was excessively absent and that the question of excuse is irrelevant where an employee can not maintain his regular attendance."

It is the opinion of this Board that the Claimant knew or, at the very least, should have known what was required of him to avoid further discipline. The Board also finds that the Claimant was given sufficient information on which to prepare his defense; that the record establishes that the Claimant was provided with a fair and impartial hearing; and that the application of this no-fault attendance policy did not violate the stated time limit provision of Rule 35(c) of the July 1, 1979 Memorandum of Agreement.

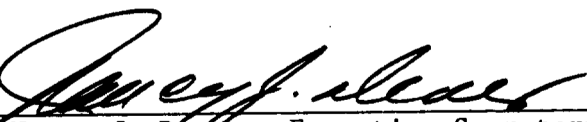
Based on the foregoing, the Board agrees with the findings of the hearing officer and the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 9th day of October 1991.