

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13564
Docket No. 13468
00-2-99-2-64**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Consolidated Rail Corporation**

STATEMENT OF CLAIM:

“Claim of Employee:

- 1. The Consolidated Rail Corporation arbitrarily and capriciously assessed Machinist R. S. Green five (f) days suspension per Rule 6-A-4 (b) (1), following trial held on March 20, 1998. (Five Days deferred suspension.)**
- 2. Accordingly, Machinist R. S. Green should have her record cleared of any reference to the charges, as if the unjust discipline had not been imposed, and removal of the five (5) days deferred suspension. Restore any and all benefits and wages without impairment.”**

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 employee 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.

The Claimant had been employed as a Machinist at the Carrier's Juniata Locomotive Shop, Altoona, Pennsylvania, for approximately five years when, on March 8, 1998, she failed to report for her 11:00 P.M. assignment. Following Investigation and Hearing, the Carrier assessed a five day deferred suspension for poor attendance. In this Claim, the Organization first argues that the Carrier denied the Claimant her right to a fair Hearing by reading her past attendance history into the record at her trial. Secondly, it contends that under the circumstances the Carrier had an obligation to counsel the Claimant. As a single mother raising a child, the Claimant may have had FMLA rights that could have been asserted if the Carrier had done so. A five-day deferred suspension as a first action was excessive.

The Carrier's Investigation established that over the two-month period prior to her absence on March 8, 1998, the Claimant had missed work on January 22, February 18, 19 and 25. Including the March 8 date, the Claimant thus missed five of 32 assigned workdays during a period of three months, several days occasioned by sickness, others denoting no reason. The Board concludes that the pattern of attendance was clearly unsatisfactory and rejects the argument that the time frame selected for this assessment was arbitrary.

With respect to Foreman John Hartman referring to the Claimant's prior record during the Investigation and Hearing, the Board finds that substantial authority supports the Carrier's right to place that record into evidence for purposes of considering the quantum of discipline to be assessed, and that no prejudice to the Claimant's rights was demonstrated by doing so in this instance. The transcript shows that she was afforded a generous opportunity to produce evidence of her choosing, to examine and cross-examine witnesses and to freely make her case in an orderly, well-chaired Hearing with the assistance of a competent Local Union representative.

The Board has consistently stressed the importance of regular attendance as it bears on the reliability of the Carrier's operations and the workload absenteeism imposes on the employee's fellow workers. In view of the Claimant's previous record in this regard, and particularly in light of the verbal warning she received a month earlier, the Board finds that a five-day deferred suspension was not arbitrary or capricious.

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AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 27th day of October, 2000.