

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the Controlling Agreement when it improperly assessed a thirty (30) days actual suspension against Machinist J. A. Allen.
2. That accordingly the Norfolk and Western Railway Company be ordered to make Machinist J. A. Allen whole in all ways for any losses suffered including, but not restricted to, lost wages, seniority rights, insurance and hospitalization and other fringe benefits.

Findings:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 claim questions the validity of the 30-day suspension assessed against the Claimant after investigation of charges of excessive absenteeism and of falsification of reason for absence on a specified date.

We have examined the record with care and find no valid basis for reversal of Carrier's actions, procedurally or on the evidence relating to the charges and the measure of discipline.

Petitioner's contention that Carrier violated the "precise charge" requirement of Rule 33 of the controlling agreement by reason of the failure to specify in the charges the days on which Claimant was absent is untenable. The charge specified the number of days Claimant was absent in each month during the period covering the alleged excessive absenteeism. Such specification sufficiently indicated the precise nature of the absenteeism charge, and there was no need to state the days of absence in addition. (See Second Division Award 6706).

The record shows that the Claimant was represented at the investigation by the Local Chairman and two Committeemen, and that each of them participated in the proceedings. Contrary to the assertions of Petitioner, the attendance of General Foreman Bon as a witness was not requested at the investigation. There was no showing, and there is no reason to conclude, that his testimony was essential to the investigation.

Objection is now made on the basis that under the grievance procedure the third appeal of the claim had to be submitted to and was decided by Master Mechanic Scott, who testified against the Claimant at the investigation. No such objection was raised on the property on the fourth and final appeal to Carrier's Vice President-Labor Relations. No persuasive reason is suggested for reviewing that objection before this Board.

The record shows that the Claimant was absent $25\frac{1}{2}$ days out of 72 scheduled work days, in approximately four months, which is an absence of about 35% of the time in the period mentioned. This absence record is substantial evidence of excessive absenteeism. (See Second Division Award 6706). Petitioner's assertions that Carrier condoned Claimant's absenteeism are not persuasive.

With respect to the charge that the claimant falsified the reason for his absence on the date specified, the investigation record discloses conflicting testimony on the factual issues, which present questions of the credibility of witnesses and the weight to be given their testimony. Numerous awards have repeatedly held that the determination of such questions in discipline cases is within the authority of the carrier and that, in such cases, the carrier's findings predicated on credible and substantial evidence must be accepted even though the credited evidence was denied and subject to contradictory testimony. (See Fourth Division Awards 1719, 1991). These principles are decisive in the case.

Accordingly, and for the other reasons indicated, the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of February, 1977.