Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 7870
Docket No. 7760
2-CR-CM-'79

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

Parties to Dispute: ( System Federation No. 109, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
( Consolidated Rail Corporation

Dispute: Claim of Employes:

(a) That the Carrier violated the controlling agreement when on November 1, 1976, they dismissed from service, Car Repairer David L. Knarr, ConRail Repair Facility, Reading, Pennsylvania, as a result of a hearing and investigation conducted on October 20, 1976.

(b) That accordingly, the Carrier be ordered to reinstate Claimant to service with seniority rights, vacation rights and all other benefits that are a condition of employment unimpaired, with compensation for all lost time plus 6% annual interest, reimbursement of all losses sustained account loss of coverage under health and welfare and life insurance agreements during the time held out of service.

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.

Claimant has appealed three separate disciplinary cases to this Board, which have been designated Dockets Nos. 7760, 7761 and 7762. Since Docket No. 7760 contains a dismissal penalty, we will review these cases concurrently for purposes of expository consistency.

In Docket No. 7761, the specifications contained in the notice of charges directed the claimant to appear for an investigation "in connection with your attendance record from May 10, 1976 through July 21, 1976 as relates to the fulfillment of your scheduled 8 hours tour of duty to determine your responsibility if any, in this matter." The investigation

was duly held on July 29, 1976, at which time Claimant was found guilty of the charges and suspended from service for five (5) days.

In Docket No. 7762, Claimant received several notices to report for hearing and investigation for similar attendance infractions, dated respectively, July 29, 1976, September 8, 1976 and September 10, 1976, but because of various postponements, the hearing was held on September 16, 1976, when he was found guilty of the new attendance charges and suspended from service for ten (10) days. Both these disciplinary penalties were appealed to this Board.

In Docket No. 7760, Claimant was again charged with similar infractions and was dismissed from service, effective November 1, 1976, following an investigative hearing held on October 20, 1976. The notice of dismissal dated November 1, 1976 stated, "The following entry has been made on your service record: Dismissed from the service of the Consolidated Rail Corporation, effective November 1, 1976 account your continued lateness in reporting off duty and as evidenced by the necessity of a third hearing and investigation held on October 20, 1976 in connection with your reporting off duty for business at 10:30 A.M. or four hours after your scheduled starting time on Friday, September 24, 1976."

In all three ex parte submissions, Claimant contends that Carrier didn't specify a particular rule violation in the notice of charges. He argues that this procedural omission vitiates acceptable due process standards.

Our review of this contention reveals that this procedural concern was not made on the property at the time of the hearing in Docket Nos. 7761 and 7762 and was raised at the end of the investigation in Docket No. 7760, with no follow up request for a continuance of the proceeding.

We find no explicit reference that a specific rule must be identified in a notice of charge and hence must reject this argument. (See for example on this point, Second Division Awards 6391 and 5244).

Claimant acknowledged at the end of the investigations that the hearings were conducted in a fair and impartial manner. This imprimatur of approval certainly doesn't suggest an amorphous adjudicatory setting. On the contrary, it strongly supports the conclusion that Claimant was aware of the exact nature of the charges and defended himself accordingly. We also find nothing in the record that indicates that the three investigative hearings were inconsistent with Agreement Rule 34. Claimant's admissions above dispose of this assertion. Neither do we find that the hearing officer was prejudiced. This argument, incidently, was not raised at the time of the hearings and entertaining it now would impair the pragmatic solemnity of the adjudicatory appeals process. In all three cases, claimant affirmed at the end of the hearings, that, they were properly conducted and it would be a tragic inversion of logic for us to conclude otherwise.

Proceeding now to a discussion of the substantive charges, we find that Claimant had no real desire to protect his work assignment, since his total attendance record between May and October 1976 was characterized by a repetitive pattern of employment indifference that is palpably at odds with the purpose and intent of Agreement Rule 22.

We recognize that Rule 22 provides some degree of interpretative flexibility, but surely by no stretch of the immagination could it be creatively rationalized to cover and condone claimant's attendance record. We held in Second Division Award 7348 that "when an employee is consistently and habitually absent over a long period of time that his employment becomes a serious liability rather than an asset Carrier is entitled to terminate his services". We find this principle directly applicable to the fact specifics herein.

Furthermore, Carrier's disciplinary actions in Docket Nos. 7761 and 7762 were predicated upon irrefutable probative evidence and reflected a sensitive awareness of the importance of progressive discipline. That Claimant chose to regard these limited penalty prescriptions was solely at his peril.

In Docket No. 7760 Claimant continued manifestation of employment indifference eventually caused his dismissal. He evidently elected not to protect his assignment, despite the admonitions and results of the prior investigations.

It would ill serve the public interest, if Carrier permitted its employees to disregard at whim their attendance and reporting obligations. The safety and well being of its operations would be at stake. We have no recourse under the particular facts and circumstances of this case, other than to deny this claim.

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 28th day of March, 1979.