

The Second Division consisted of the regular members and in addition Referee Barbara W. Doering when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carman Lionel C. Robertson was erroneously charged with excessive absenteeism on August 6, 7, and 8, 1980.
2. Carman Lionel C. Robertson was unjustly assessed thirty (30) days suspension on August 25, 1980, following investigation held August 21, 1980.
3. That the Chicago and North Western Transportation Company be ordered to make whole Carman Lionel C. Robertson, with all benefits that are a condition of employment unimpaired, and compensate him for all time lost plus 13% interest on all such lost wages, in accordance with Rule 35.

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.

On August 11, 1980 Claimant was notified to appear for a formal investigation on the following charge:

"Your responsibility for your excessive absenteeism. Your absenteeism became excessive when you again failed to protect your assignment on August 6, 7, and 8, 1980."

An investigation followed pursuant to this Notice on August 21, 1980 which the Organization contends was not fair and impartial because: 1) the hearing officer did not limit consideration to the 3 specific dates mentioned in the Notice; and 2) because the hearing officer became a witness by introducing evidence as to Claimant's past record.

The Board does not agree with Petitioner that under a charge of excessive absenteeism, consideration must be limited to the cited triggering absence. The word "excessive" clearly connotes an accumulation of absences which have reached

an intolerable level. We do agree with Petitioner that absences after the triggering absence and after issuance of the Notice should not be considered, since at the time of issuance Carrier had obviously concluded the intolerable level had been reached and it is inappropriate to add new charges after the event.

Thus the Board finds that the investigation and appeal procedure was fairly conducted and that it was not improper to consider past absences in addition to the triggering absence under a charge of excessive absence. Consideration of absences subsequent to issuance of the Notice was not proper, but reference to such absence does not necessarily invalidate the original charge. The claim must simply be sustained or dismissed on the basis of evidence (in existence) and relied upon at the issuance of the Notice.

Petitioner argues that since Claimant notified Carrier that he was sick and unable to work and further substantiated this claim with a doctor's statement upon his return, that he is not guilty of failure to protect his assignment on August 6, 7, and 8. Carrier does not argue that he failed to notify the proper authority or substantiate his illness. Carrier argues that for whatever reason he was simply excessively absent. He had been absent six and a half days in July and was off four and a half days in the first eight days of August. Carrier argues that this is clearly excessive and the question of excuse becomes irrelevant where an employee cannot maintain reasonably regular attendance.

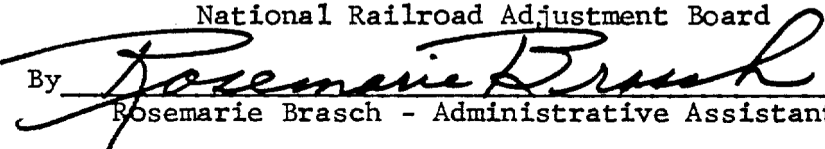
The Board agrees that the question of excuse is not the primary issue under a charge of excessive absence. The record shows that Claimant was indeed excessively absent in the period immediately preceeding the charges and in view of his prior record which includes numerous conferences on the subject of absenteeism, the 30 day suspension imposed was not unduly harsh or arbitrary and the claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of May, 1983.