

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

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

DISPUTE: CLAIM OF EMPLOYES:

1. That the Consolidated Rail Corporation be ordered to compensate Machinist S. DeTillio ten (10) days pay at the prevailing machinist rate of pay.
2. The Agreement of May 1, 1979 is controlling.

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 employes 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 Claimant, Machinist S. DeTillio, was issued a ten day suspension for absenteeism for his failure to report for duty on March 24, April 6, 11, 12, 20, 1980, and for his failure to work all assigned hours on April 19, 1980. The Organization asserts the Carrier's action is arbitrary and capricious in that the Claimant had properly explained the reasons for the absences and the Carrier failed to refute his testimony.

The Carrier states the record clearly establishes the Claimant was absent on each date involved in the charge. The Carrier further asserts it has the right to expect an employe to pursue his occupation in a diligent and faithful manner.

The Board notes the Carrier's initial charge details the dates of absence and, then, states "which, in light of your previous attendance record, constitutes excessive absenteeism." Examination of the record discloses no evidence was submitted relating to the Claimant's prior attendance record. Thus, the discipline imposed rests upon the five days of absence running from March 24 through April 20, 1980.

The Carrier has the right to anticipate that employes will report to work as scheduled. Occasional absence, tardiness or leaving early for sickness, accident, or legitimate reason are acknowledged facts of the industrial work

place. An employe's attendance record, over a period of time, may, for whatever reason, be deemed to be unsatisfactory or excessive in absences. The point at which this occurs depends upon the circumstances involved in each case, such as the number of absences, the reasons thereof, and, if applicable, the probability of future absence. Herein, the Board is confronted with five absences in a period of less than one month. Lacking the linkage of a prior record of absenteeism, this is a very short period upon which to conclude the degree of Claimant's unreliability can no longer be tolerated and/or excused. This Board cannot go beyond the record. The Carrier has failed to meet its burden of proving the charge and, therefore, we have no option but to sustain the claim.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1983.