

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

(International Association of Machinists and
(and Aerospace Workers, AFL-CIO
Parties to Dispute: (
(The National Railroad Passenger Corporation

Dispute: Claim of Employees:

1. That the National Railroad Passenger Corporation be ordered to restore Machinists A. Baker to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinist rate of pay.

2. That Machinist A. Baker be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost during this period, in accordance with Rule 24 (f) of the prevailing Agreement which was effective September 1, 1977.

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.

Claimant had been a Machinist employed for three years at the Carrier's Detroit Michigan Facility. On February 6, 1980, the Claimant was instructed to attend two (2) investigations held on February 27, 1980.

The first charge claimed:

"In violation of the NRPC General Rules of Conduct, Rules, 'A', reading, 'Employees must render every assistance in carrying out the rules and special instructions and must promptly report to thier (sic) supervisor any violation thereof'.

In violation of the NRPC General Rules of Conduct, Rule 'F', reading, 'Safety is of first importance in the discharge of duty and in case of doubt or uncertainty, the safe course must be taken. Employees will not be retained in the service who are careless of the safety of themselves or others.'

"In violation of the NRPC General Rules of Conduct, Rule 'G', reading, 'Employees shall make prompt report to their supervisor of any injury or illness'.

In violation of the NRPC General Rules of Conduct Rule 'K' reading, 'Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instruction from their supervisor'.

In that on January 30, 1980 you reported to your Foreman, Robert DeWitte that you were short of breath and subsequently sent to Mayberry Clinic for examination; you were requested on February 1, 1980 by General Foreman, Michael Johnson to complete and sign appropriate accident forms and of this date forms are still incomplete and that even though you were released by the clinic for work on Monday, February 4, 1980, you have not reported or made no attempt to contact your Foreman."

The second charge asserted:

"In violation of the NRPC General Rules of Conduct, Rule 'K', reading, Employees must report for duty at the designated time and place, attend to their duties during the hours prescribed and comply with instructions from their supervisor'.

In that on January 27, January 31, 1980 you were absent from duty and on January 9, January 10, January 18, January 23 and January 30, 1980 you were late for duty."

The Claimant was terminated from service. In reference to the second set of charges, the Claimant argues that the charges of "lateness on January 9, 10, 18, 23 and 30 are "minute" and do not constitute "excessive absenteeism." Claimant further asserts that the absence on January 31, 1980 was attributable to a job-related injury received on January 30.

The Claimant contends there were no rule violations as charged by the Carrier in the first set of charges.

The Carrier maintains the Claimant's guilt has been clearly established on both sets of charges.

Our review of the record concerning the second set of charges indicates that the Claimant himself admitted:

"...to coming in one hour late on the 18th, a half hour late on the 21st and went home two hours early on the 30th, the date of the accident and twenty minutes late not a half hour."

He also subsequently changed his testimony concerning January 9 and 10, when he acknowledged:

"On the 9th and 10th he was right, I was late but I wasn't a half hour late. I was twenty minutes late."

The record would sufficiently establish that the charge of lateness for the five (5) days indicated has been proven and no supportable explanation is evident in the record concerning the appropriateness of the absence on January 27. With the exception of the charge for the January 31 absence, the record supports the Carrier's assertions on the second set of charges.

The first set of charges essentially focuses on the events centering around the Claimant's efforts to correct "excessive piston travel on a locomotive." The adjusting rod reportedly came out of the slack adjuster tube assembly. When the rod came loose in the tube, the bar slipped and the Claimant indicated he "fell backwards on the ice striking a water hydrant."

The record indicates the Claimant completed the job and then reported to his supervisor that he found it "hard to breath." The supervisor completed an "Amtrack Injury/Illness Report" on 1/30/80 which indicated the Claimant was sent to the Carrier sponsored medical facility, the Mayberry Clinic. The doctor at the clinic noted on 2/1/80 that the Claimant could return to "adjusted light work" on 2/4/80.

The Claimant did advise his Foreman via letter on February 1, 1980 that he wanted a Union representative present when he completed his Amtrack injury forms. A subsequent accident report issued on 2/12/80 identified the injury or damage as "fractured ribs left side."

There appears to be considerable dispute as to the events that occurred on the night of January 30. A reasonable reading of the record does not refute the contention of the Claimant that while performing his assignment, he slipped on the ice, struck a water hydrant and fractured his ribs. If indeed the events happened as reported by the Claimant, it is plausible that he was not immediately aware of the extent of his injury. Apparently even the examining doctor at the Mayberry Clinic did not so diagnosis the injury.

However, even given the assumption of a job-related injury, the continued failure of the Claimant to advise the Carrier of his status after the date of February 4, 1980 set by the clinic doctor and after completing the Accident Report on February 12th, represents a failure to protect his position.

Even if the Claimant were given the full benefit of not being aware of the extent of his injury until it was medically established, he was not so incapacitated to prevent him from periodically contacting his foreman as to his status subsequent to February 12, 1980. Consequently, at a minimum, the charge that the Claimant, once released by the clinic for work on February 4, and after completing the Accident Report on February 12th, failed to have "reported" or made an "attempt to contact your Foreman" is sustained by the record.

Having proven at least several of the significant charges against the Claimant, the question remains as to the appropriateness of the penalty. The Claimant's prior record indicates:

1. Mr. Baker was hired on January 6, 1977.
2. On September 1, 1977 the Claimant was charged with excessive absenteeism,
signed a waiver and was issued a written reprimand.
3. On November 10, 1977 Claimant was issued a 5-day deferred suspension for excessive absenteeism.
4. On March 16, 1978 the Claimant signed a waiver accepting a 20-day suspension; 15 days assessed for excessive absenteeism and lateness which activated the 5-day deferred.
5. On October 5, 1979 the Claimant again signed a waiver, accepting a 20-day deferred suspension resulting from excessive absenteeism.

Other than the period January 31-February 4, 1980, the record also does not support any claim of extenuating and mitigating circumstances relative to the Claimant's pattern of tardiness and absenteeism. Failure to report for duty for an extended period of time places an improper burden on the manpower needs of the Carrier and places an additional burden on those colleagues who regularly appear.

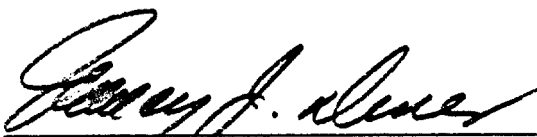
Concerning the Claimant's conduct in those instant charges which were established in the record and in light of his past record and many warnings during only three (3) years of service, the Carrier's disciplinary action is found to be appropriate and should not be disturbed by this Board.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of April, 1984