

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to remove the letter of reprimand from the record of Machinist C. E. Pearsall for alleged absenteeism in accordance with the provisions of Rule 7-A-1 (e) of the prevailing Agreement effective May 1, 1979.

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, C. E. Pearsall, has been employed as a machinist at Carrier's Selkirk Diesel Terminal in Selkirk, New York, since October 23, 1970.

On July 16, 1980, Claimant picked up his paycheck and then marked off to go to a doctor's appointment. On July 17, 1980, Claimant marked off because he did not feel well. As a result of Claimant's failure to report for work on these dates, he was notified to attend a trial on August 11, 1980, in connection with the following charge:

"To develop the facts and determine your responsibility if any, in connection with your failure to report for duty 4 p.m. to 12 midnight on the following dates: July 16 and 17, 1980, which, in light of your previous attendance record, constitutes excessive absenteeism."

Claimant was found guilty as charged and was assessed a discipline of a letter of reprimand.

The Organization's first argument is that the Claimant cannot be found guilty of being absent as he notified Carrier that he would be off on July 16 and 17, 1980.

The Organization's second contention is that the use of Claimant's prior attendance record, which was the only evidence offered showing Claimant's excessive absenteeism, violated Rule 6-A-3(a) as the attendance went beyond 30 days of the date of the charge. Rule 6-A-3(a) states:

"The trial shall be scheduled to begin within 30 calendar days from the date the employee's General Foreman or equivalent officer had knowledge of the employee's involvement."

The Carrier's position is that Claimant's mere action of notifying Carrier of his absence on July 16 and 17, 1980, did not give rise to permission or authority for such absence.

Regarding the Carrier's use of Claimant's prior attendance record, the Carrier argues that its use was necessary to prove the charge that Claimant's absences on July 16 and 17, 1980, were, in fact, excessive. The Carrier offers numerous Board awards in support of this contention.

After reviewing the record in this case, it is the opinion of this Board that the Claimant was properly found guilty of excessive absenteeism based upon his absences on July 16 and 17, 1980, together with his numerous absences for the previous six-month period.

The mere fact that Claimant notified Carrier he would not report for duty on July 16 and 17, 1980, did not give Claimant permission or authority to be absent.

The Carrier's use of Claimant's attendance for the six months prior to the date of the instant charge for the purpose of showing that the July 16 and 17, 1980, absences constituted excessive absences was proper and necessary. Such practice has been upheld numerous times. For example, in Award 8431, this Board held:

"Rule 11 of the applicable agreement mandates that the disciplinary investigation '. . . shall be held as promptly as possible but within ten days of the date when charged with the offense or held from service.' The instant charge against Claimant concerned excessive failure to attend to his assignment. The number of absences becomes meaningful only when viewed over a period of time. Thus, the Carrier cannot properly charge an employ (sic) with consistent failure to maintain his assignment without accumulating a record of absences within a period of time. Here, the Carrier had accused Claimant of continued absences during a three and one-half month period. The hearing was promptly held at the conclusion of the period. So, the Carrier fully complied with Rule 11.

Similarly, this Board held in Award 8546:

"The Organization urges that we should set aside the discipline assessed because it is alleged that Carrier did not comply with Rule 11(a), the governing rule. Such rule requires that an investigation shall be held as promptly as possible but within ten days of the date charged with the offense or held from service. Petitioner points out that Claimant was held accountable for days as much as five months prior to the investigation.

Excessive absenteeism necessarily occurs over a somewhat extended period of time. If the Organization's position were sustained, however, excessive absenteeism could never be the subject of an investigation, something obviously not intended by the parties. From the very nature of the offense each day of the unauthorized absence is a new straw on the camel's back until the breaking point is reached. With Carrier, December 29 was the final straw, whereupon the investigation was promptly scheduled and promptly held, beyond ten days only at the instance of Claimant's representative."

Excessive absenteeism, even for legitimate reasons such as illness, need not be tolerated. As stated in Public Law Board 1790, Award 117, Referee Dolnick:

"Every employer has the right to expect every employee to report for work and work all of the scheduled hours on every regularly work day. Over the years an employee may occasionally be absent because of illness or an employee may have a long consecutive absence because of sickness or accident. And an employee may have an occasional good reason to be absent or tardy or in need to leave early for numerous good reasons. But absences, tardiness, and early leaves, for whatever the reasons, including illness, may be excessive and, if continued over a length of time, may be excessive subject to discipline.

"There is no precise formula expressed in hours, days, or percentage that determines excessive absenteeism. Each case must be examined on its merits.

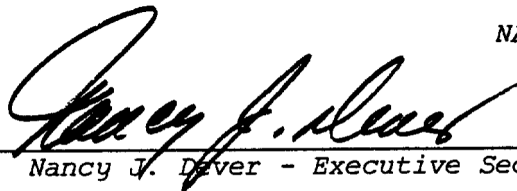
Claimant's absences on July 16 and 17, 1980, when viewed in conjunction with his previous attendance record, illustrate his unreliable work habits. In the six months prior to the dates involved in this incident, Claimant had been absent 13 days and worked less than a full day on five other occasions. Almost all of Claimant's absences were on the day before or after his rest days. In light of Claimant's poor attendance, the letter of reprimand assessed is fully warranted.

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 5th day of September, 1984.