

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
(
(Metro-North Commuter Railroad
(Consolidated Rail Corporation)

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist J. McKernan 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 J. McKernan be restored to service with seniority unimpaired and compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued to him and were lost during this period, in accordance with 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, J. McKernan, entered the service of the Carrier on October 11, 1978. Claimant was employed as a machinist at Conrail's Harmon Shop located in Harmon, New York. Claimant was sent a notice to attend a trial based upon the following charges:

"Being absent without permission on December 14, 17, 18, 19, 20, 21, 26, 27, 31, 1981, and January 1, 2, 3, 4, 1982."

The trial was held on January 13, 1982. Claimant did not appear at the hearing, although a notice had been sent to him on January 6, 1982, to his last known address. Two representatives of the Organization appeared at the hearing and made no objection to the trial in absentia.

Following the trial, Claimant was notified that he had been dismissed in all capacities from the Carrier's service.

The Organization argues that it has become known that Claimant's absenteeism was the result of his being hospitalized for personal problems. The Organization argues that the Carrier was wrong to discipline Claimant for attempting to "straighten himself out." The Organization contends that since the Carrier has

a rehabilitation program to aid its employes in time of stress, it should have known better than to discipline this employe who is suffering from personal problems and attempting to seek treatment.

The Carrier contends that the evidence of Claimant's absenteeism was clear and un rebutted and proved conclusively that Claimant had been excessively absent. Moreover, Carrier contends that Claimant's discipline was not arbitrary, capricious, or in bad faith.

Carrier contends that it is fully within its power to dismiss a Claimant for excessive absenteeism.

As the Board has stated in several previous opinions:

"This Board has repeatedly pointed out the detrimental affects of absenteeism upon the operation of railroads. The confusion and disruption created when an employee absents himself from work without due notice to supervision is harmful not only to the employer but to the employees as well. We, therefore cannot fault management when it takes effective measures to deter excessive absenteeism and tardiness (Second Division 6240)."

Claimant's record reveals that he was absent at least 120 days from January 1, 1981, until January 13, 1982, the day he was dismissed. That amount of absenteeism averages out to ten days per month or a 50 percent absenteeism record on all days scheduled to work. Claimant has previously received a 30-day suspension for excessive absenteeism.

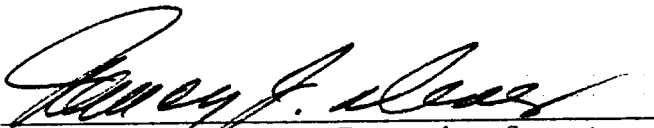
This Board has ruled, on numerous occasions, that unless the action taken by the Carrier is discriminatory or arbitrary, it will not set aside disciplinary action imposed by the Carrier. In this case, the Board does not find any violations of any of those principles on the part of the Carrier. Since the record of the Claimant was so bad, the Carrier was fully within its rights to terminate him.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1984.