

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10129
Docket No. 10252
2-MNRC-MA-'84

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 Authority (Consolidated Rail Corporation)

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist J. Smyth to service and compensate him for all lost pay up to time of restoration to service at the prevailing Machinist rate of pay.
2. That Machinist J. Smyth 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 employee or employees involved in this dispute are respectively carrier and employees 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. Smyth, entered Carrier's service on September 19, 1978. During the relevant time period, he was employed as a machinist at Conrail's Harmon Shop located in Harmon, New York. On November 20, 1981, Claimant was notified by letter, sent by certified mail, return receipt requested, to Claimant's last known address, to attend a trial on November 25, 1981, in connection with the following charges:

"Being absent on November 5, 6, 7, 10, 11, 12, 13, 16, 17, 18, 19, 1981, which, in light of your previous attendance record, constitutes excessive absenteeism."

The trial was held on November 25, 1981, and Claimant did not appear. There were two Organization representatives at the trial, and they did not request a postponement. Following the hearing, the Carrier notified Claimant that he was dismissed from the service.

The Organization argues that Carrier acted in an arbitrary and capricious manner when it dismissed Claimant because Carrier was aware that Claimant was hospitalized at Stony Lodge Hospital during the period of his absenteeism and being treated for drug problems. The Organization argues that Carrier is aware

that some of its employees have been suffering from drug problems because Carrier has set up a rehabilitation program to deal with its employees suffering from drug and alcohol abuse.

The Organization argues that drug abusers are handicapped, and discrimination against the handicapped is illegal. The Organization argues further that the Claimant has recognized his problem and has entered a drug rehabilitation program to cure himself. Hence, the Organization concludes it was discriminatory and arbitrary for Carrier to terminate Claimant.

The Carrier argues that the Organization representatives did not dispute that Claimant had been absent on the days in question. Moreover, Carrier states that the "mark-off sheet," which was introduced at trial, clearly showed that Claimant was absent 16 days between October 25, 1981, and November 19, 1981. Carrier argues that although it since has learned that Claimant was hospitalized, the fact remains that Claimant did not have permission to be off from work. Mere notification, argues the Carrier, does not excuse absences.

Finally, Carrier argues that the discipline assessed was warranted because of Claimant's brief service, and that on May 6, 1981, Claimant had been reprimanded for continued excessive absenteeism. Carrier argues that the Harmon Shop, where Claimant worked, is the largest car repair shop in the region and is vital to the successful operation of the company. Excessive absenteeism cuts right into the heart of the railroad's operation and seriously impedes productivity.

This Board has ruled, on numerous occasions, that excessive absenteeism is a serious offense and one for which a Carrier may legitimately take serious disciplinary action up to and including discharge. In Second Division Award 7348, we held:

"When an employee is so consistently and habitually absent over a long period of time that his employment becomes a serious liability rather than an asset, Carrier is entitled to terminate his services."

Also, in Second Division Award ⁵⁰⁴⁹~~5409~~:

"Nothing in the agreement obligated the Carrier to attempt to operate its railroad with employees repeatedly unable or unwilling to work the regular and ordinarily accepted shifts, whatever reason or excuse exists for each absence"

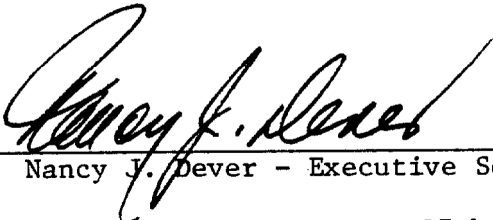
Based on the record of the Claimant in this case, the Carrier had a sufficient basis to terminate his employment for excessive absenteeism. This Board will not substitute its judgment for that of the Carrier unless it finds that the action taken by the Carrier is arbitrary, discriminatory, or capricious. In this case, based on the record of the Claimant, we do not find that the action taken by the Carrier violated any of those principles. Hence, we will not set aside the discipline and the claim will be denied.

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 17th day of October 1984.