

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 five day suspension assessed Machinist J. A. Carter, from his service record 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 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. A. Carter, began his service with the Carrier in 1971. He was employed as a machinist. On August 4, 1980, Claimant was instructed to attend a trial on August 12, 1980, in connection with the following charge:

"To develop the facts and determine the responsibility, if any, in connection with your failing to report for duty 8 a.m. to 4 p.m. on the following dates: July 19, 20, 21, 22, 29, 1980, and August 1, 2, 3, 1980, which, in light of your previous record, as indicated per attached G-1518. Daily attendance record, constitutes excessive absenteeism."

As a result of the trial, Claimant was found guilty and assessed a five-day deferred suspension.

The Organization contends that the Carrier acted in an arbitrary and capricious manner when it imposed the discipline on the Claimant. The Organization argues that the Claimant complied with the rules which required that an employee notify the work location if he is going to be absent.

The Organization argues further that the Claimant was an elected delegate to the union convention and was attending the convention on July 29, 1980, and August 1, 2, and 3, 1980. The Organization contends that Carrier's own officers agreed that Claimant was wrongfully charged with four of the days and struck them from the record. Since the Claimant complied with the agreement on the other four days, argues the Organization, he has, thereby, committed no wrong and should not have been found guilty.

The Organization contends further that since the notice referred to his previous attendance record, he was prejudged to be excessively absent. Moreover, since the Carrier presented no evidence of the "normal" absence record of a "normal" employee, it could not uphold a finding of excessive absenteeism because it is impossible to know what is excessive.

The Carrier argues that the Claimant admitted his absences on July 19, 20, 21, 22, 29, 1980, and August 1, 2, and 3, 1980, at the hearing, although he contended he had a valid excuse. Since Claimant admits his absences, argues the Carrier, he has thereby admitted his guilt, and the Carrier has met its burden.

Carrier also argues that an employer has a right to expect its employees to show up for work and has a right to take disciplinary action against employees who neglect their duty and responsibility to their employers. Carrier argues that since Claimant was absent a total of 26 days from January 1, 1980, to August 3, 1980, he was "slipping into the unacceptable habit of frequent absences" and that the five-day suspension cautioned the Claimant that excessive absenteeism was a serious violation and would not be tolerated by the Carrier. Carrier contends that a five-day deferred suspension is a moderate discipline and since Claimant was guilty, it was fully warranted in this case.

Carrier also contends that the record is clear that Carrier was not informed that the August 2 and 3 absences were for union business until after the charges were lodged against the Claimant on August 4, 1980. But, even disregarding these dates, Carrier argues that Claimant's record still reflects an unacceptable number of excessive absences.

This Board has reviewed the record in this case, and it finds that the action taken by the Carrier was not arbitrary or capricious. It is clear that the Claimant had an excessive number of absences during the year 1980 and that his large number of days missed in July and August aggravated the already poor situation. This record is clear that Claimant was properly on union business for two days of the convention, but he never notified the Carrier, until afterward, that he wanted the extra two days for the union business. As the rules require, Claimant should have asked for the union leave for the full four days of the convention in advance of going to the convention. The Carrier seems to indicate that had that been the case, it would have granted him that permission.

It is clear that Carriers have a right to discipline employees for excessive absenteeism. 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."

The five-day deferred suspension assessed by Carrier was a very moderate penalty. However, it is believed that under the facts and circumstances present that the discipline has served its purpose and will be removed from Claimant's record.

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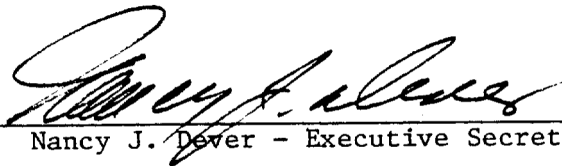
Award No. 10149
Docket No. 10225
2-CRC-MA-'84

A W A R D

Claim disposed of in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1984.