

The Second Division consisted of the regular members and in addition Referee Jonathan Klein when award was rendered.

Parties to Dispute: (International Association of Machinists
(and Aerospace Workers
(
(Missouri Pacific Railroad Company

Dispute: Claim of Employee:

Claim in behalf of Machinist P. R. Witt for eight (8) hours per day on his regular assignment at the pro rata rate commencing September 2, 1982; for all overtime for which he would have been available, reinstatement of seniority with accredited vacation qualification and compensation for personal leave days, plus six percent (6%) per annum interest, due to Carrier's violation of the controlling Agreement. Claim is continuing.

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 Machinist P. R. Witt was regularly employed by the Carrier at the Settegast Diesel Shop, Houston, Texas, where he worked the 7:00 a.m. - 3:00 p.m. shift. Under date of August 23, 1982, the Carrier's master mechanic notified Claimant to report on August 31, 1982 for a formal investigation of the following charges:

"to develop the facts and place the responsibility, if any, in connection with your alleged failure to properly protect your assignment Friday, August 20, 1982, on the 7:00AM to 3:00PM Shift, by arriving late at 8:00AM and a review of your personal, absentee and other records of employment."

On September 2, 1982, Claimant was dismissed from Carrier's service.

The Organization argues that Claimant's discharge was the result of an unfair and partial investigation due to consideration of Claimant's prior record. The Organization further contends that Claimant's thirteen (13) years of service coupled with improvements in his attendance record compel this Board to find that the discipline of discharge was unjust and unreasonable. Rule 17 of the controlling agreement provides:

"Employees shall not lay off without first obtaining permission from their foremen to do so, except in cases of sickness or other good cause of which the foreman shall be promptly advised."

By Claimant's own admission at the investigation, he was late to report on August 20, 1982, allegedly because his truck broke down on the way to work. The evidence reveals that Claimant was absent, in-late or out-early for 1980, 1981 and 1982 in the following totals:

	<u>IL/OE</u>	<u>Absent</u>
1980	8	88
1981	15	36
1982 (Through August 20, 1982)	11	8

While a substantial number of Claimant's absences were due to his reporting off sick, a number of instances involved absences where Claimant neither appeared at work, or reported off to the Carrier. However, whether or not Claimant had legitimate illnesses as in 1980, the fact remains that he continued to either report in-late or out-early in 1981 and 1982. Rather than his record showing an improvement, Claimant was proceeding for the year 1982 at a pace which was higher than that of 1981. If Claimant's absences for 1981 were adjusted downward in consideration of his sick days, Claimant was absent as of August 20, 1982 at a rate which if continued would have exceeded his net absences for 1981.

Claimant's admitted offense which appears minor on its face, cannot be judged for the purposes of punishment out of context with his prior record of a significant number of in-lates, out-earlys and absences. Claimant was afforded an opportunity by the notice and investigation to anticipate not only the charge itself, but the ultimate discipline which would upon proof of the charge be assessed against him. Claimant was able to clarify his prior record to the extent that the copious number of absences were somewhat reduced. However, we are not persuaded by Claimant that the Carrier used his past record to establish his guilt as to the offense charged.

Upon review of the entire record, the Board finds the discipline imposed commensurate with the gravity and nature of the offense. The Claimant had received a prior, 30-day deferred suspension for failure to protect his assignment. The Carrier and Claimant had four (4) conferences on October 30, 1981, May 29, 1982, June 30, 1982 and July 2, 1982, during which the issue of Claimant's attendance and absenteeism were discussed. Claimant acknowledged at the formal hearing that his attendance record was the subject of the conferences on those occasions, and he had been informed that his attendance record was excessive and required improvement.

Claimant's record of absences, is such that this Board find his employment to be a serious liability to the Carrier. In addition, the Carrier has shown that Claimant cannot reasonably be expected to resume work and maintain an acceptable attendance record. The Board finds the Claimant's dismissal to be reasonable and without caprice.

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 15th day of May, 1985.