

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

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

Dispute: Claim of Employees:

1. That Machinist J. F. Brogden was held for trial on September 8, 1982 for:
  - (a) Failure to protect your assignment on 6-29-82, 7-1-82, 7-2-82, 7-7-82, 7-8-82, 7-9-82, 7-12-82, 7-13-82 & 7-14-82, which, together with previous record, constitutes excessive absenteeism.
  - (b) Absent without permission & failing to report off on 7-12-82, 7-13-82 & 7-14-82.
2. That, accordingly, Machinist J. F. Brogden's record be cleared and he be compensated for each and every day he was dismissed.

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 J. F. Brogden, was notified to report for a Trial to be held on September 8, 1982, to consider charges alleging his failure to report off, his failure to protect assignment, his absence without permission and excessive absenteeism. The Trial was postponed when Claimant failed to appear and was later held in absentia. A review of the record finds nothing improper with regard to the absentia proceedings (Second Division Awards 10214, 10181). Claimant was properly notified and for whatever reason chose neither to attend, nor to advise his representatives or the Carrier.

In the record of the Trial this Board notes that the preponderance of substantial evidence documents that the Claimant on three occasions failed to provide any knowledge whatsoever to the Carrier of his whereabouts. It further notes that the record substantiates the historical legitimacy of the charge of excessive absenteeism.

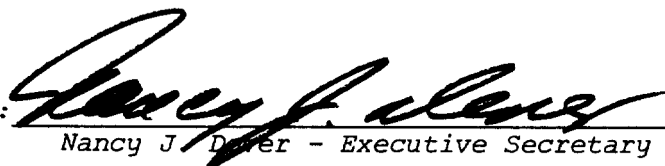
A review of the instant case does not provide any circumstances by which to consider the discipline imposed as excessive or unwarranted and this Board in its appellate function does not consider issues of leniency. The Carrier cannot be expected to retain employees who over long periods of time are repeatedly absent and for whom the evidence substantiates a lack of desire to perform faithful service. Claimant's dismissal from service for excessive absenteeism under the circumstances at bar cannot be construed as arbitrary, capricious, nor unjust. This ruling is entirely consistent with past rulings of the National Railroad Adjustment Board. (Second Division Award 7348.) This Board will not disturb the Carrier's judgment in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 5th day of June 1985.