

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10673
Docket No. 10589
2-CRC-EW-'85

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

Parties to Dispute: (*(International Brotherhood of Electrical Workers*
(*(Consolidated Rail Corporation (Metro North)*

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly dismissed Third Railman T. D. Hanely, Jr., from service effective July 21, 1982.

2. That accordingly the Metro-North Commuter Railroad Company be ordered to restore Third Railman T. D. Hanley, Jr. to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Third Railman's rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his record.

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 was dismissed from service with the Carrier effective June 21, 1982, due to excessive absenteeism. At the time of his dismissal Claimant was employed as a Third Railman headquartered in North White Plains, New York, with a shift from 8:00 a.m. - 4:30 p.m., Monday through Friday.

Claimant was charged on July 18, 1982, as follows:

"Absenting yourself from your assigned position as Third Railman in North White Plains on June 1, 2, 10, 11, 1982, which in light of your previous record, constitutes excessive absenteeism."

Claimant did not dispute that he was absent on the dates charged, and testimony indicates that he called in sick on each date at the following times: June 1, 11:10 a.m.; June 2, 12:45 p.m.; June 10, 1:30 p.m.; and June 11, 12:30 p.m. The Organization insists in defense to the charge that the Claimant notified Carrier by telephone of his absences, and that he was sick as alleged.

The record speaks with undisputed clarity that Claimant received no medical attention for his alleged sickness(es) until June 16, 1982. When Claimant reported in sick on each of the occasions as charged, he gave no indication that he would be attended to by a physician or other medical provider, nor is there any explanation for the late hour when the reports were made. The Claimant presented a physician's note at the investigation dated June 29, 1982. This note confirmed Claimant's treatment on June 16, 1982, for acute bronchitis without mention of earlier treatment or complaints. While the veracity of Claimant's illness remains open to question, the fact remains that he was absent from his scheduled assignment on the dates in question.

Even if the Board were to assume, arguendo, the veracity of Claimant's alleged illnesses this does not cause the Carrier to fail to meet its burden of proof on the charge of excessive absenteeism. Contrary to the Organization's position, compliance by an employee with Rule 8-H-2 (which requires an employee to notify his shop as soon as possible when unable to report or detained from work for any cause) does not justify the Claimant's record of absences from work, whether or not the same are justified by illness. The record shows that the Claimant was absent thirty-three work days out of one hundred and eleven from January 8, 1982 through June 11, 1982.

An employer in Carrier's industry is entitled to have employees who perform their duties in a timely and reasonable fashion without excessive periods of absenteeism. See, Award No. 10435, Second Division; Award No. 10407, Second Division. Claimant's record of absences must be examined in its entirety to make a determination of excessiveness. (Award No. 10472, Second Division; Award No. 10073, Second Division.) An offense of this nature which may appear minor on its face cannot be judged for the purposes of punishment out of context with a Claimant's prior record of absences. (Award No. 10396, Second Division.)

The Organization argued that when Carrier levied this charge against the Claimant he was subject to double jeopardy. The Organization's argument wholly is without merit. Claimant received a ten day suspension for absences on April 19, 20, May 3, 6, 7 and 11, 1982, whereas his present Claim before this Board pertains to charges of absences on four separate and distinct dates. Although review of Claimant's absentee record is once again required by the charge, this Board finds it is triggered by wholly separate and distinct events than those upon which his previous suspension was based.

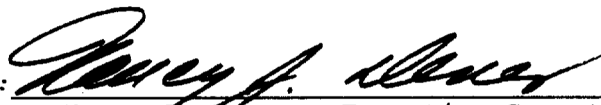
The Board finds based upon review of all the facts that Carrier was relieved of its duty to establish the usual rate of absenteeism as the standard against which the Claimant's record is to be judged. The Board further finds upon the record that the number of Claimant's absences are so numerous as to become a serious liability to the Carrier. (Award No. 10268, Second Division.) In such an event, the Board further finds that the penalty of dismissal was neither arbitrary, capricious nor excessive.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1985.