

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
(Seaboard System Railroad

Dispute: Claim of Employees:

1. That the Seaboard System (formerly Seaboard Coast Line) violated the applicable January 1, 1968 Agreement, particularly Rule 32, but not limited thereto, between the Carrier and the International Association of Machinists & Aerospace Workers when it unjustly suspended Machinist H. W. Brigman from the service for a period of ten (10) consecutive work days beginning October 5, 1983, account allegedly being absent without permission and excessive absenteeism.
2. That accordingly, Carrier be ordered to compensate Machinist Brigman for all wages lost at the Machinists pro rata rate as result of his suspension from the service, make claimant whole for any other pay or benefits lost and clear his service record of all reference to the instant dispute.

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 H. W. Brigman, is employed by the Carrier, Seaboard System Railroad, at its Waycross, Georgia, shop.

A formal investigation was conducted on July 28, 1983, into charges that the Claimant was excessively absent from work and was absent from his assignment without permission from April 15, 1983, to July 6, 1983. As a result, the Claimant received a ten-day suspension. The Organization thereafter filed a claim on the Claimant's behalf.

The Organization contends that the Carrier violated Rule 32 of the controlling Agreement when it unjustly suspended the Claimant. Rule 32 provides in part:

"No employee shall be disciplined without a fair hearing by a designated officer of the Company....At a reasonable time prior to the hearing such employee and the local chairman will be apprised in writing of the precise charge against him. The employee shall have reasonable opportunity to secure the presence of necessary witnesses and be represented by the duly authorized representative..."

Specifically, the Organization argues that the Carrier did not prove the charges against the Claimant. The Claimant was not found guilty of absence without permission on any specific date; there was no evidence that the Claimant was absent without permission or justification on any specific date or at any time. The remaining "excessive absenteeism" charge is not a precise charge, as required by Rule 32. The Organization further points out that the Claimant should not be required to prove his innocence because the Carrier did not introduce any testimony or evidence showing the Claimant's guilt.

The Organization also argues that the Carrier ignored pertinent rules included in the Agreement, which control in this dispute. Certain material that the Carrier included in the Claimant's personal record should not be used to corroborate its findings during the investigation because the material was not subject to cross-examination or verification. Also, the Carrier did not notify the Organization or the Claimant of the reasons that it disallowed the claim, as is required by Rule 30. Finally, anything that occurred subsequent to the filing of the charges is irrelevant to the settling of the charges.

The Organization therefore contends that the Claimant is innocent of wrongdoing, and that the Carrier's suspension of the Claimant was an abuse of managerial authority. The Organization asserts that the claim should be allowed in its entirety; the Claimant should be compensated for all lost wages, made whole for all lost benefits, and his record cleared of all references to this dispute.

The Carrier contends that there is no merit to this claim. The Carrier asserts that it properly processed this claim. The Claimant received a fair and impartial hearing; the Carrier afforded the Claimant all of his rights and privileges during the investigation. The Carrier properly declined the claim as provided in Rule 30, and did not interfere in any way with the Organization's further processing of the claim.

In addition, the Carrier asserts that the record contains substantial evidence of the Claimant's excessive absenteeism. The Claimant's work record for the three-year period preceding this dispute establishes his chronic absenteeism. The Carrier points out that not all of the absences are justified by medical evidence; in addition, the Claimant's compliance with Rule 19, by notifying his Foreman of the absences, does not justify chronic and excessive absenteeism. The Carrier argues that because of the seriousness of the offense, suspension is neither arbitrary nor capricious, but extremely lenient.

The Carrier contends that it does not employ part-time workers; its employees must be present on their assigned workdays. Because it has met its burden of proof, the Carrier asserts that this claim should be denied in its entirety.

This Board has reviewed all of the evidence and testimony in this case, and it finds that there is substantial evidence in the record to support the Carrier's finding that the Claimant was guilty of excessive absenteeism. It was proven at the hearing that during 1981, the Claimant was absent 152 workdays; during 1982, the Claimant was absent 140 work days; and in 1983, the Claimant was absent 63 workdays. Those absenteeism rates compute out to 63 percent, 58 percent, and 45 percent, respectively. There is no doubt that the Claimant was chronically absent.

Although the Claimant contends that he has been ill, it is fundamental that an employer has a right to expect regularity of attendance from its employees. This Board has ruled, on numerous occasions, that excessive absenteeism is a serious offense, and one for which the Carrier may legitimately take 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, the Carrier is entitled to terminate his services."

Also, in Second Division Award 5049, we held:

"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..."

Hence, there is no question that the Carrier had the right to take disciplinary action against the Claimant.

This Board has reviewed all of the procedural objections raised by the Organization and finds that the hearing was fair, and the Claimant was afforded all of his rights.

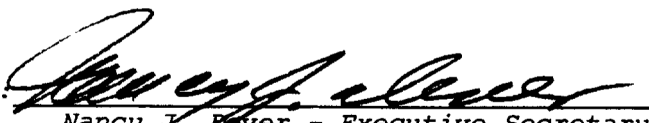
Once this Board determines that there is sufficient evidence to find a Claimant guilty of a serious rule violation, this Board must then turn its attention to the discipline imposed by the Carrier. It is fundamental that this Board will not substitute its judgment for that of a Carrier unless the Carrier's action is unreasonable, arbitrary, or capricious. This record demonstrates that the Claimant had been counseled previously for his poor absenteeism record. Hence, a ten-day suspension after the continual excessive absenteeism on the part of the Claimant was not unreasonable, and this Board will not set it aside.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest.


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of January 1986.