

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That under the current Agreement the Consolidated Rail Corporation unjustly suspended Electrician Selkirk, N.Y. J. H. Woodill from service 30 days, effective October 10, 1983, unjustly causing him to be held from service 30 days.

2. That accordingly the carrier be ordered to restore Electrician J. H. Woodill 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 Electrician'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 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 employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimant, J. H. Woodill, an Electrician with the Carrier and in service since June, 1974, was given a 30-day actual suspension commencing October 10, 1983 as a result of an Investigation held on September 15, 1983. The Claimant was charged with excessive absenteeism, specifically, being absent on April 20, 21, and 25, 1983, especially in light of the Claimant's alleged previous poor attendance record.

The Organization argued that, while the Claimant was not at work on the dates in question, he was prevented from reporting to work due to circumstances beyond his control. On April 20 and 21 he had a serious medical

condition, and on April 25 his ride did not show, and, therefore, the Claimant could not report to work. The Organization stated the Carrier has not defined what excessive absenteeism is, therefore, it has not proven that the Claimant is being treated fairly in this matter. In addition, the charges were not specific. The Organization also argued the Carrier cannot include the Claimant's past record in this case because of Rule 6-A-1, which states that the trial must begin within 30 days after the offense, and, since the employee's past record occurred more than 30 days prior to the trial, it cannot be considered.

The Carrier argued the Investigation was conducted in a fair and impartial manner. The Claimant was charged exactly with the offenses. The Claimant admitted he was absent on the dates in question and had no legitimate excuse. The Claimant's past record was very poor, particularly in the area of absenteeism, and, accordingly, the penalty was very lenient. In addition, the Claimant did not mark off on any of the occasions by his own admission, which is a Rule violation.

Upon complete review of the evidence presented, the Board finds the Hearing conducted by the Carrier was fair and impartial. The Claimant was properly charged, although there was no mention in the charges of the Claimant's failure to comply with the mark-off procedure; therefore, the Board will not consider this fact. The Claimant has admitted to the absences on the dates in question, therefore, it is left to the Board to determine whether or not the excuses given by the Claimant were legitimate under the circumstances. The Organization states the Carrier has not borne its burden in this manner, and it is true that in discipline cases the Carrier is required to prove the main contention of the case. It is also true, however, that each side is required to prove its contentions, and it was the Claimant's contention that he was not responsible for the absences with which he was charged. With respect to the absences of April 20 and 21, 1983, the Claimant stated he was prevented from reporting to work because of an injury, yet he produced not one bit of evidence corroborating his contention. With respect to his absence of April 25, 1983, the Claimant stated he was waiting for a ride. This was attested to at the second Hearing, however, providing transportation to work is the Claimant's responsibility. While it is unfortunate that he did make arrangements with another employee, there was no evidence that he made any effort to find another way to work, and, in fact, by his testimony, he waited two hours past his starting time before he realized that his ride was not going to show. The Board finds the absences which occurred on the dates in question were the responsibility of the Claimant. The Board must now determine whether or not the absences were excessive, and, if so, if the penalty is appropriate. The Organization states the Carrier has no standard of excessive absenteeism, and it is true that no policy was introduced into the record. However, this Claimant was disciplined on other occasions for excessive absenteeism. With respect to the appropriateness of the penalty, the Board finds that, in a long series of cases before this Division and other Divisions, it has been found that past records of Claimants are appropriate for determining the proper penalty in discipline cases. The Claimant's work record from November of 1980 through 1983 is extremely poor. The only disturbing element is that a 10-day suspension for absences which occurred during July of 1983, some 3 months after the absences of this case, were

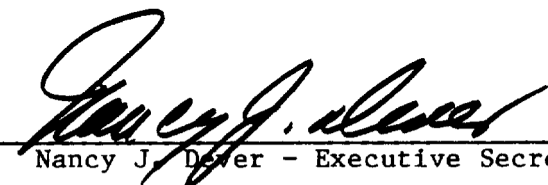
included in the Claimant's past record. However, since the Investigation in this case was postponed by mutual agreement until September of 1983, well after the July suspension, the Board will not overturn the Carrier's decision on this basis. Because of the foregoing, the Board finds the Carrier has proven the main contentions of its case, and, therefore, the Board will not substitute its judgment for the Carrier's in this matter. The Claim will be denied.

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 9th day of April 1986.