

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

(International Association of Machinists and
(Aerospace Workers

Parties to Dispute: (

(National Railroad Passenger Corporation
(AMTRAK)

Dispute: Claim of Employee:

1. That the National Railroad Passenger Corporation (Amtrak) be ordered to restore Machinist G. N. Hummell to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinist's rate of pay.

2. That Machinist G. N. Hummell be compensated for all insurance benefits, vacation benefits, holiday benefits and any other benefits that may have accrued and were lost in this period and otherwise made whole for all losses in accord with the prevailing agreement dated September 1, 1977, subsequently amended.

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 employees 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 were given due notice of hearing thereon.

The Claimant, a Machinist, was discharged for excessive absenteeism as a result of an investigation held on November 6, 1984. The discharge was effective November 15, 1984. Subsequently, the discharge was modified to a suspension and the Claimant was scheduled to return to work effective February 12, 1985. However, the Claimant failed to pass a back-to-work physical and was not returned to service until June 3, 1985. The Claimant was charged with being tardy on October 8, 1984, October 10, 1984, and being absent October 12, 15, 16, 17, 18 and 22, 1984.

The Organization argued that the Carrier's conduct of the Investigation was not fair and impartial. They noted the Carrier had no plans to have any witnesses at the Hearing and the Hearing Officer's demeanor was unusual, and he did not extract any pertinent facts. With respect to the merits, the Organization argued the Carrier failed in its burden of proof. The discipline was not appropriate to the offenses listed or with the past record of the Claimant. A review of the Transcript of the Hearing shows that the testimony does not establish the case which must be made by the Carrier. The Organization stated the Claimant produced a doctor's note prior to the charges which excused the Claimant for all of the absences except for the October 22, 1984 occurrence and that the October 8, 1984 tardy was excused with permission of the Claimant's Supervisor. With respect to the October 10 tardiness, the Organization noted it was only 10 minutes and was due to the failure of his automobile. With respect to the October 22, 1984 absence, it is alleged that the Claimant had similar symptoms which caused his earlier absences and that he had properly marked off.

The Carrier argued that a fair Investigation was conducted. The Transcript of the Hearing shows the Hearing Officer did not act in a prejudicial manner. The Organization raised no objection to the conduct of the Investigation at the time of the Investigation. The Carrier stated that the absentee and tardiness record of the Claimant is totally unacceptable. The excuses for the tardiness and absences in question are not acceptable. The doctor's note does not indicate that the Claimant should be excused from work, but only that he was under treatment. Absenteeism is a serious offense; the Claimant has shown his unwillingness to report for work on a regular basis; and it is clear that the Claimant did not benefit from progressive discipline. The Carrier stated that on pages 7 and 8 of the Transcript the Claimant concedes his guilt in that he admitted he was tardy and absent on the dates he was charged. The Claimant has been consistently tardy and absent over an extended period of time. In any event, if the Board should modify the penalty, the Carrier stated it should be for net wages only.

Upon complete review of the evidence, the Board finds the Carrier conducted a fair and impartial Hearing as required by the Rule. The Board can find no evidence in the Transcript of the Hearing Officer acting in a prejudicial manner. This is not the first time this Board has considered the work record of this particular Claimant. In Award 10758 the Board upheld a 30-day deferred suspension concerning activities which occurred during February of 1984. During the period June 16, 1977 through March 8, 1984, the Claimant has been charged on 8 separate occasions for Rule violations; particularly of note are infractions which occurred on January 26, 1984 and March 8, 1984, both of which resulted in suspensions. The Carrier has the right to expect reasonable attendance from its employees. Excessive absences place a tremendous burden not only on the Carrier, but on other employees who have to pick up the slack for this Claimant. However, this case differs from the facts that were presented in Award 10758 in that the Claimant did produce a doctor's excuse prior to being charged with any offenses. This effectively excused the Claimant for 5 out of his 6 absences which occurred in October. With respect to the tardiness, the October 8, 1984 occurrence was with permission of his Supervisor; therefore, the Board is left with the October 10, 1984 tardiness and the October 22, 1984 absence.


The Claimant stated the tardiness was due to the failure of his automobile. The Board does not find this a viable excuse, particularly in light of the past record of this Claimant. It is his responsibility to maintain his automobile in a state that would allow him to get to work on time. Regarding the October 22, 1984 absence, the Claimant stated he still had some symptoms from his earlier excused absences. However, this was not verified by a note from his physician, and the Board finds this would be an unexcused absence. The Board is then left with the question of whether or not the one tardy and one absence justify the suspension levied by the Carrier. The Carrier recognized a modification of the penalty was appropriate and, certainly, the Board wants to convey to this Claimant that his absentee record will not be tolerated. The Claimant received a 30-day deferred suspension as a result of Award 10758, and the Board feels it is appropriate, under the circumstances of this case, that the Claimant be ordered to serve that suspension. Therefore, backpay for wages only will be granted from the end of that 30-day suspension to February 15, 1985. With respect to the period February 15 through June 3, 1985, the Claimant failed to pass a back-to-work physical under circumstances that were within the control of the Claimant; and, therefore, no backpay will be awarded for that period of time. The Claim will be sustained on that basis.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Power - Executive Secretary

Dated at Chicago, Illinois, this 28th day of January 1987.