

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11883
Docket No. 11803
90-2-89-2-88

The Second Division consisted of the regular members and in addition Referee William O. Hearn when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. Under the current controlling Agreement, Laborer J. Bly, Marshalltown, Iowa, was unjustly dealt with when suspended for a period of five (5) days (May 28, 1988 through June 1, 1988), following a hearing held on May 19, 1988.
2. That accordingly, Chicago and Northwestern Transportation Company be ordered to compensate Mr. Bly for all time lost at the pro rata rate and the mark removed from 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 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 waived right of appearance at hearing thereon.

On April 28, 1988, Claimant was notified to appear for a formal Investigation charged with:

"Your responsibility for excessive absenteeism while employed as laborer, first shift 7:00 A.M. to 3:00 P.M. at Marshalltown Diesel Shop after having been warned after your March 13, 1988, incident. Your absenteeism became excessive when you were again absent on April 20, 1988."

The Investigation began at 10:00 A.M., April 28, 1988, and Claimant was present. However, he did not have his representative. The Hearing Officer postponed the Investigation until such time as Claimant could secure his representative. The Hearing Officer stated he was postponing the Investigation for one week which would be May 5, 1988, at 10:00 A.M.

On May 4, 1988, the Investigation was postponed until May 19, 1988. Claimant failed to show up at the Investigation on May 19, 1988. The Investigation was recessed for 15 minutes while the Shop Manager tried to reach Claimant. He was unable to reach Claimant due to the fact Claimant had no telephone number filed with Carrier furthermore Claimant wasn't listed in the telephone book. Claimant called the third shift Foreman on May 19, 1988, and reported off sick however he did not ask for another postponement of the Investigation. Claimant's Local Chairman testified he had made attempts to get a hold of Claimant but was unable to do so. He also testified he had no knowledge of why Claimant did not appear for the Investigation. Claimant did not ask his Local Chairman to secure a postponement of the Investigation.

The Shop Manager read into the record the Equipment Management Absenteeism Policy. This Policy became effective October 1, 1987.

Shop Manager, Mr. Volkmann, testified:

"Q. Mr. Volkmann, when was this enacted in - when 1980---

A. October 1, 1987.

Q. Was each employee made aware of it and given a copy of it?

A. Each employee was made aware of it. There were copies circulated in the lunch room, there were classes held with each shift to teach them about the absenteeism policy."

The Hearing Officer asked the Shop Manager to read Claimant's work record into the record; at that point Claimant's Local Chairman objected stating that Claimant was not there due to illness and also objected that no dates were shown on the Investigation letter or proper charge of excessive absenteeism. We might add that Claimant's Local Chairman did an excellent job in representing Claimant in the face of Claimant's failing to appear on his behalf.

After a thorough review of the record and in particular in view of the Shop Manager's letter of February 10, 1988, addressed to Claimant concerning a discussion he had with Claimant on February 10, 1988, relative to six (6) occurrences of absenteeism or leaving early within the last six (6) months. The Manager stated in the letter he discussed with Claimant and outlined how the Equipment Management Absenteeism Policy worked. He also advised Claimant that his immediate contract supervisor discussed his absentee record with him on October 7, 1987, and that his immediate officer supervisor discussed with Claimant his absentee record on December 16, 1987. Carrier's Shop Manager offered help and assistance if needed to help improve Claimant's absence record. After the conference with Carrier's Shop Manager on February 10, 1988, Claimant was off on February 23, 1988, March 8, 1988, March 13, 1988, March 29, 1988, April 5, 1988, April 10, 1988, and April 17, 1988. Claimant was given a letter of warning April 20, 1988. April 25, 1988, Claimant was charged with excessive absenteeism.

Both Carrier and the Organization have presented numerous Awards in support of their respective positions. In review of these Awards we find the language in Third Division Award 22973 describes the position of this Board the best.

In Third Division Award 22973 it is stated:

"The Board finds that the record clearly identifies the claimant as being chronically afflicted with absenteeism and a total lack of responsibility towards his position. Based on the Carrier's long history of patiently counseling this employee on his deportment, and Carrier's showing of leniency, the Board is convinced the problem with claimant is incurable. Therefore, the Board affirms the judgment of the Carrier in its discipline and finds it not excessive. The Carrier's action in imposing the discipline was justified and with sufficient cause. The action was not arbitrary, capricious or in bad faith. There is no proper basis for the Board to interfere with the discipline."

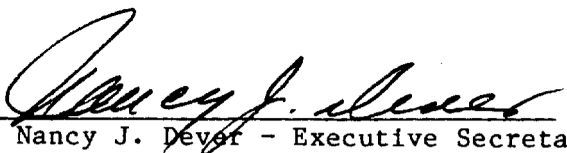
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Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1990.