

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

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM:

1. That the Duluth, Missabe and Iron Range Railroad Company violated the terms of our current agreement, in particular Rule 28(a), when they arbitrarily suspended Carman Mark S. Condon from service for a period of fifteen (15) working days as a result of investigation held January 25, 1989.

2. That accordingly, the Duluth, Missabe and Iron Range Railway Company be ordered to compensate the claimant in the amount of eight (8) hours pay at the regular rate for each work day he was held out of service commencing on the first day he was judged by the Company's Medical Officer to be fit to return to service. Further, he be reinstated with his seniority rights unimpaired and he be compensated for any other wage loss, if any, suffered by him resulting from said suspension.

3. That accordingly, the mark of discipline concerning the transcript of the investigation and letters and all material used in the investigation be removed from the Claimant's personal file and 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 employed as a Carman at Carrier's Proctor, Minnesota, Car Shops.

In the latter part of 1988, Supervisors began to notice that Claimant was often missing work on the days immediately proceeding or following week-ends. Nothing was said to Claimant about changing his ways. At some point in time Carrier reviewed Claimant's time records and found he had been absent from duty seven days during the 63-day period from September 16 through December 16, 1988. It appears from the testimony that the Claimant on each of the dates that he was absent had called in and notified his Foreman that he was going to be absent as called for in Rule 18.

Under date of December 20, 1988, the Claimant was notified to attend an Investigation in connection with his excessive absenteeism. The letter listed seven specific dates Claimant failed to report to work between September 16 and December 16, 1988. Following the Investigation, Claimant was notified under date of February 2, 1989, that he was found guilty of the charge and was being suspended for 15 days.

The Organization argues that the Claimant did not receive a fair and impartial Hearing. We have reviewed the testimony and find that for the most part the Investigation was conducted in a fair and impartial manner. Questions raised by the Hearing Officer relating to whether the Claimant was a good employee and whether he had undergone treatment for drug or alcohol abuse were not, in our opinion, pertinent to the charge.

The Organization contends that the Carrier (upon observing the Claimant's gradual build up of absenteeism) should have counseled him about his behavior. We agree with the Organization in this respect. The Carrier admits the Claimant's record of absenteeism was being noticed sometime prior to the time it decided to review his record. The Claimant's Supervisor admitted at the Investigation that he had not discussed the matter with the Claimant prior to the time he was placed under charges.

Claimant, prior to being furloughed in November, 1984, had been warned four times regarding his absenteeism, however, he had not been disciplined for absenteeism. Claimant had been furloughed for 38 months subsequent to his last letter of warning (October 1984). We believe that because of this lapse of time Claimant, in the interest of fair play, should have been called in and warned that continued absenteeism could result in discipline. Carrier officials instead chose a wait-and-see attitude leading this Board to believe they may, in this case, have wanted a problem to develop where discipline could be assessed, rather than attempting to correct the situation. We base this conclusion on the Supervisor's answers (Lines 45 and 52, Page 5 of Investigation testimony). The Supervisor admits to discussing with Claimant certain of his other shortcomings, but not his absenteeism.


Based on the entire record in this case it is our conclusion that the Claimant in this instance was unjustly suspended. Accordingly, the Claimant shall have his record cleared with respect to this incident, and he shall be compensated for any wage loss suffered as the result of the 15 day suspension pursuant to Rule 28.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 10th day of July 1991.