

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

PARTIES TO DISPUTE: (International Association of Machinists and  
( Aerospace Workers  
(  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That the Chicago and North Western Transportation Company (hereinafter referred to as the "Carrier" violated the provisions of the Joint Agreement, as amended July 1, 1979, specifically Rule 35, when, subsequent to an investigation which was neither fair nor impartial, it unjustly and improperly suspended Proviso diesel shop Machinist employee P. E. Bernaeyge (hereinafter referred to as the "Claimant") from service for a period of ten (10) days.

2. That accordingly the Carrier compensate Machinist P. E. Bernaeyge for all wages lost while suspended, additionally, credit Machinist Bernaeyge for time lost for vacation and other benefit rights, and that record of the investigation proceedings, including reference to his unjust discipline, be expunged from his personal 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.

Claimant was employed as a Machinist at Carrier's Proviso, Illinois Diesel Shop. On February 15, 1990 he called in and said he would be late; he never reported for duty. On February 16, 1990 he reported 15" late. Under date of February 22, 1990 the Claimant was directed to appear for a formal Investigation, charged, as follows:

"Your responsibility for excessive absenteeism which became excessive when you were absent Feb. 15 and late for your assignment on Feb. 16, 1990."

The Investigation was postponed until March 6, 1990. Following the Investigation the Claimant was notified under date of March 8, 1990, that he was being disciplined to the extent of 10 days actual suspension.

The Carrier argues that the Claimant received a fair and impartial Investigation and that the charge against the Claimant was proven.

The Organization argues that the Claimant did not receive a fair and impartial Investigation, that the Carrier failed to sustain the charge; and that Claimant was denied an unbiased review of his appeal.

Upon review of the Investigation the Board finds that the Claimant received a fair and impartial Investigation. We believe the Officer that conducted the Investigation would have been better advised to have worded a couple of his questions other than he did, however, we do not believe two improperly worded questions is sufficient cause to conclude that the Investigation was not fair and impartial. Throughout the Investigation the Claimant and his Representative were given every opportunity to question the witness and to bring up any evidence in support of the Claimant's defense.

A review of the Investigation indicates the Carrier did sustain the charge. The Claimant did not deny that he failed to report for work on February 15 and that he was 15 minutes late on February 16. The Claimant blamed his problems on the weather. The Carrier brought out that many other employees were late on February 15 because of the weather but other than the Claimant they eventually reported for duty. Claimant after failing to report for duty on February 15 failed to allow enough time on February 16 so that he would be on time for work. At the Investigation Carrier introduced the Claimant's Absentee Report. The Report shows that on August 12, 1989 the Claimant was suspended for five days because of attendance problems. Subsequent to August 12, 1989 and prior to February 15, 1990 (a period of approximately 6 months) the Claimant was absent 21 times and late 4 times. Thirteen of the absences appear to be excused absences and the remaining 8 appear to be unexcused absences. We are of the opinion that when the Claimant was absent on February 15, 1990, this absence along with the other 21 absences constituted excessive absenteeism.

We do not agree with the Organization's argument that Claimant was denied an unbiased review of his appeal. It is true General Superintendent Kless notified the Claimant of his suspension and also denied his Claim because he apparently is the first Officer designated by Agreement or practice to receive Claims. However, the Claim was subsequently appealed to the Director Labor Relations where it received an unbiased review.

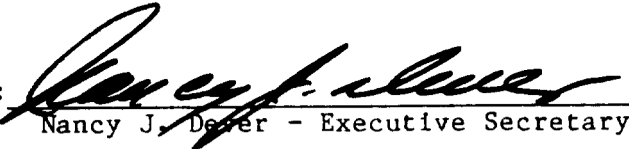
Based on the record in this case there is no basis for over turning the discipline assessed by the Carrier.

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 19th day of February 1992.