

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
(CSX Transportation, Inc. (The Chesapeake and Ohio
Railway Company)

STATEMENT OF CLAIM:

1. That the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (hereinafter "carrier") violated Rules 21 and 37 of the Shop Crafts Agreement between Transportation Communications International Union -- Carmen's Division and the Chesapeake & Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) on August 22, 1989, when it assessed a ten (10) day overhead suspension and a probationary period for the remainder of 1989 against Carman N. M. Fabrizio (hereinafter "claimant") on account of alleged excessive absenteeism.

2. That the carrier violated the service rights of the Claimant by failing to provide a fair hearing and procedural due process requirements of Rule 37 of the Shop Crafts Agreement by failing to provide a fair and impartial hearing as provided for under Agreement Rule 37 by prejudging and predetermining the claimant's guilt and by capriciously and arbitrarily assessing discipline against the claimant.

3. That accordingly, the carrier be ordered to clear the record of the claimant and the ten (10) day overhead suspension and six (6) month probationary period for the remainder of 1989 be removed from his personal file.

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 held seniority as a Carman at Raceland Car Shop. In August 1988, Claimant was recalled to service. Beginning in August 1988, and continuing through July 1989, Claimant was absent 34 times for various reasons and late twice. Under date of August 2, 1989, Claimant was instructed to attend an Investigation on August 8, 1989. He was charged with excessive absenteeism and absence in violation of Rule 21.

Following the Investigation the Claimant was notified that he had been found guilty of the charges and was being assessed a ten day overhead suspension with a probationary period for the remainder of calendar year 1989.

The Organization argues that the Claimant was denied a fair Hearing in that it was procedurally flawed and that the discipline rendered was totally unwarranted and unjust.

We have reviewed the testimony and find that the Investigation was conducted in a fair and impartial manner. No objections were made at the Investigation by either the Claimant or his representative regarding the manner in which it was conducted.

We do not agree with the Organization's argument that the discipline was totally unwarranted and unjust. In a period of approximately one year the Claimant was absent 34 times for various reasons. In this Board's opinion this constitutes "excessive absenteeism."

The fact that Claimant called in each time and reported he would not be in does not change the fact he was not available to perform service for the Carrier on the dates he was off. If all employees had a comparable absenteeism record it would be most difficult for the Carrier to carry out its work in an orderly and responsible manner.

Based on the record before this Board we find no basis to disturb the action of the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Davis - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1992.