

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. (former Chesapeake & 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 and Ohio Railroad Company (CSX Transportation, Inc.) (revised June 1, 1969) on June 22, 1989, when it assessed a twenty (20) calendar day suspension against Carman Garold Skaggs (hereinafter "claimant") on account of alleged excessive absenteeism from his assigned position.

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 twenty (20) calendar day suspension 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 was assigned as a Carman at Raceland Car Shop and was absent on April 10, 11, 19, 21, 24, 25, 26, 27, 28, May 1, 2, 3, 4, and 5, 1989. Under date of May 8, 1989, he was instructed to attend an Investigation. Claimant was charged with excessive absence from his assigned position. Following the Investigation on June 5, 1989, the Claimant was notified that for his responsibility in the matter he was being assessed a 20 day suspension.

The Organization argues that the Claimant was denied a fair Hearing; that Claimant had obtained permission to be off; and that Claimant produced a note from his doctor supporting need for him to be off.

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

The Claimant alleges he had permission to be off two or three weeks beginning April 21, 1989, however, the Foreman with whom he discussed the matter denied the allegation. The Foreman admitted to discussing the matter with the Claimant, however he did not admit to giving the Claimant permission to be off two or three weeks. During the telephone conversation on April 21 the Claimant indicated he would come in and talk to someone in the Foreman's office about the matter. The Claimant's immediate Supervisor testified that the Foreman had informed him that the Claimant intended to come to the office regarding the matter. The Claimant did not show up at the office on April 21, and nothing further was heard from him during the period in question.

While the Claimant produced a note from a doctor we do not consider it to be supportive of his position. The note was dated July 7, 1989, and was not produced until well after the June 5, 1989, Investigation. The note lists six dates that the Claimant attended the doctor's office for treatment. Only one date, April 24, 1989, pertains to the dates involved in this dispute. Four of the visits to the doctor's office occurred after May 5, 1989, the last date involved in this dispute. The note indicates Claimant was in his office for treatment, however, the doctor does not state that Claimant was unable to work during the period in question. Thus the note does not lend any support to Claimant's position he was too sick to work during the period in dispute.

On December 23, 1988, Claimant was written a letter of caution concerning his failure to obtain permission to be absent from his assignment. On March 31, 1989, the Claimant admitted guilt to excessive absence and was suspended from April 3 through April 7, 1989. In light of such a recent suspension the Claimant should have made sure on April 21 that the absence he desired was authorized. This might have been accomplished (depending upon the circumstances) had the Claimant made an appearance at Carrier's office. This Claimant failed to do even though he had indicated to the Foreman "he would be in."

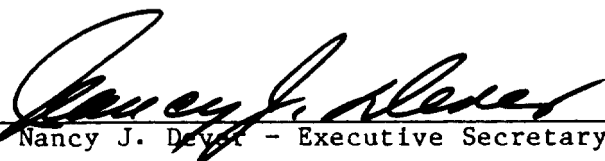
Based on the record before this Board we find no basis to disturb the action of the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Devet - Executive Secretary

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