

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12680
Docket No. 12659
94-2-93-2-9

The Second Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

- "1. That the Norfolk & Western Railway Company violated the controlling Agreement, when they unjustly assessed Machinist R.E. Bill, Roanoke, VA, a thirty (30) day deferred suspension.
2. That accordingly, the Norfolk & Western Railway Company be ordered to make Machinist R.E. Bill whole for any losses associated with the deferred suspension and clear his record of any reference to the charges."

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 employe 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.

At the time this claim arose, Claimant was employed as a Machinist in Carrier's Shaffers Crossing Locomotive Shop in Roanoke, Virginia. In a letter dated October 1, 1990, Claimant was notified to report for a formal investigation.

"...In connection with excessive absenteeism and late reporting to your assigned position during the period from January 1, 1990, through September 22, 1990, in that you were absent or late for part of all of the day on twenty (20) occasions."

Following the investigation, Claimant was notified that he was assessed a 30 day deferred suspension, to be held in abeyance for twelve months so long as he maintained a "clean record" and removed thereafter. The Organization appealed the discipline by letter of December 4, 1990. Carrier denied the claim on February 1, 1991, and it was subsequently processed up to and including the highest Carrier officer authorized to handle such matters. A conference between the parties was held on October 23, 1991, but the matter remained unresolved.

Carrier maintains that Claimant's absences and/or tardiness from January 19, 1990, through September are unacceptable. The record establishes that Claimant was absent, late or left work early on twenty separate occasions during the eight-month period under review. This represents a absenteeism rate nearly four times the absenteeism rate for the Shaffers Crossing Shop collectively. Carrier also points out that Claimant was counseled regarding his lateness and absenteeism on June 10, 1990, but was absent on eight days following June 10, 1990, until September 22, 1990.

Carrier also notes that Claimant acknowledge his absences at the investigation, so Carrier has clearly met its burden of persuasion in this case. Although such an infraction warrants strict discipline, Carrier states that it reviewed claimant's record overall, and assessed him instead a more lenient 30 day deferred suspension.

The Organization submits that Carrier was arbitrary and capricious in its treatment of Claimant, in that Carrier failed to meet its obligation to prove that Claimant was excessively absent and late or violated any Rule of the controlling agreement. The Organization also maintains that Claimant was erroneously charged because the incidents of which he was accused occurred more than ten days before the charging period. It protests, in addition, Claimant was not afforded a fair and unbiased hearing.

Finally, the Organization urges that Claimant had permission to be late or absent nearly all of the whole or part days in question as noted on his actual record, and the remaining days he was legitimately ill. Therefore there is no basis for discipline, as Carrier cannot grant permission to be absent on the one hand and penalize Claimant for such absence on the other.

With respect to the Organization's procedural objections, a careful reading of the transcript indicates that the hearing officer's conduct was beyond reproach. Claimant was afforded a full and fair hearing. In addition, as the Carrier pointed out at the investigation, in the case of a charge of excessive absence, it is not feasible to expect Carrier to restrict its review of

Claimant's record to 10 days prior to the charge. By its very nature, a charge of excessive absence is an accumulated infraction. So long as Carrier has notified Claimant within 10 days of the "triggering" violation, it has met its contractual obligation in that regard.

Claimant admitted at the investigation that the dates Carrier showed him as either tardy or absent were correct. Accordingly, the only two remaining issues in this case are 1) whether Claimant's absences were approved by Carrier, and therefore condoned and 2) if not, whether the discipline assessed was unreasonable in the circumstances.

The Organization relies on the fact that on Claimant's record there are frequent notations of "permission" next to his absences. That notation is, at best, misleading. As Carrier has shown persuasively, the notation does not indicate prior accession to Claimant's lateness or absence. Rather, it indicates that Claimant called in to report his absence or anticipated lateness and, therefore, was not in peril of being considered "absent from work without permission" -- a still more serious infraction than the one with which he is here charged.

The evidence on the record before us indicates that Claimant was not being disciplined for being ill, or for being away without leave. Rather, he was disciplined for his absenteeism, per se. Carrier's characterization of those absences as excessive is not without merit. In Second Division Award 9379, it was held that "excessive absenteeism...may be defined...as that point, because of absences, when an employe becomes a liability rather than an asset to a Carrier...." Claimant's established pattern of absenteeism, for whatever reason, meets the standard set by in its aforequoted Awards.

It is uncontroverted on the record that Carrier counseled Claimant regarding his excessive absences and lateness on June 10, 1990. Accordingly, it may be assumed that Claimant was aware of the importance of reforming his behavior. In light of his prior counseling, assessment of a 30 day deferred suspension reasonably falls into the concept of progressive discipline. Claimant was not dismissed, he was simply given a strong warning that Carrier expected his attendance to conform to reasonable expectations, and continued absences--excused or not might result in even more stringent sanctions. Under the circumstances, the Board find no reason to disturb the discipline assessed.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Catherine Loughrin / lw
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 6th day of April 1994.