

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12691
Docket No. 12682
94-2-93-2-52

The Second Division consisted of the regular members and in addition Referee John F. Hennecke when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical
(Workers
(Consolidated Rail Corporation (Conrail)

STATEMENT OF CLAIM:

"Appeal of actual suspension from service of thirty (30) days imposed on Radio Maintainer R.C. Love by the Consolidated Rail Corporation under a notice dated August 16, 1991, Indianapolis, Indiana."

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 matter arose, Claimant was employed by Carrier as a Radio Maintainer at Indianapolis, Indiana, and had been employed for a period of approximately 4 1/2 years. On June 14, 1991, Claimant was sent a notice to attend a trial, scheduled for June 24, 1991, on the following charges:

- "1. Your failure to protect your assigned position on May 30, 1991 and June 10, 1991, per Rule 8-I-2 of the IBEW Agreement effective May 1, 1979.
2. Your failure to protect your assigned position on May 30, 1991 and June 10, 1991, which in light of your previous record, constitutes excessive absenteeism."

At the request of Claimant's union representative, the trial was postponed and rescheduled for July 15, 1991. The trial commenced on that date, was recessed until July 19, 1991, and, due to the illness of Claimant, was again recessed until July 30, 1991, when it was concluded. By notice dated August 16, 1991, Claimant was notified that he was being assessed a 20-day actual suspension for failure to protect his assignment on June 10, 1991, and failure to protect his assignment on May 30 and June 10, 1991, which constituted excessive absenteeism. This suspension also triggered a 10-day deferred suspension which had been assessed Claimant by a discipline notice dated January 28, 1991, thereby resulting in a 30-day actual suspension from service.

The Organization first argues that the trial notice was "vague" and did not notify Claimant of "the exact offense for which he is to be tried", as required by Agreement Rule 6-A-3. We disagree. The notice specified the dates that Claimant was charged with being absent, the applicable rule of the agreement, and the nature of the conduct under investigation: failure to protect his assignment and excessive absenteeism. The notice was sufficient to enable Claimant and his representative to prepare and present their defense to the charges.

In spite of numerous objections raised by the Claimant and his representative during the trial, the Board must also conclude that the trial was conducted in a fair and impartial manner. Claimant and his representative were given wide latitude in presenting testimony and evidence, rejecting exhibits from being included in the record, and cross-examining Carrier's principal witness.

This Board has addressed the issue of absenteeism on numerous occasions in the past. Second Division Award 6710 reads in part:

"Every employee has an obligation and a duty to report on time and work his scheduled hours, unless he has good and sufficient reason to be late, to be absent, or to leave early. Those reasons must be supported by competent and acceptable evidence. No employee may report when he likes or choose when to work. No railroad can be efficiently operated for long if voluntary absences are condoned."

As to the charge that Claimant failed to protect his assigned position on June 10, 1991, the Board finds that there is substantial evidence in the record to support Carrier's finding that Claimant did not report for his assignment that date, nor timely notify Carrier that he would be absent, as required by Rule 8-I-2. The record also contains substantial evidence to support Carrier's conclusion that Claimant's absences on May 30 and June

10, 1991, are a continuation of Claimant's history of excessive absenteeism.

With regard to the degree to discipline assessed Claimant by Carrier, the record shows that Claimant has twice before been disciplined for excessive absenteeism, having been issued a 3-day deferred suspension on November 17, 1988, and a 10-day deferred suspension on January 28, 1991. In light of Claimant's past disciplinary record regarding excessive absenteeism, the Board does not find that the assessment of a 20-day actual suspension in this instance was unreasonable, arbitrary or capricious; therefore, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: _____

Linda Woods

Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 20th day of April 1994.