

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 13079
Docket No. 12904
96-2-94-2-57

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

PARTIES TO DISPUTE: (International Association of Machinists
(and Aerospace Workers
(National Railroad Passenger Corporation
((AMTRAK)

STATEMENT OF CLAIM:

" (1) That the National Railroad Passenger Corporation (hereinafter referred to as Carrier) improperly disciplined Machinist Byron Andrews (hereinafter referred to as Claimant) as the result of an investigation held on April 27, 1993. He was assessed a ten (10) working day suspension.

(2) That the Carrier be ordered to compensate the Claimant for all wages lost as a result of the ten (10) days suspension and that he otherwise be made whole and that his personal record file be cleared of all reference to this investigation."

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 employee 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 were given due notice of hearing thereon.

At the time of the incidents giving rise to this matter, the Claimant was assigned as a Machinist at Amtrak's New Orleans maintenance facility.

On March 18, 1993 the Claimant arrived late for duty. On March 22, 1993 the Claimant departed early from work. On March 23 and 26, 1993 the Claimant reported off sick. On April 15, 1993 he arrived late for duty. As a result of his tardiness, his early departures and his absences, the Carrier noticed a formal Investigation on April 16, 1993 to determine whether Claimant violated Carrier Rules D and O by his excessive absenteeism on the dates charged in the Notice of Investigation.

Carrier's Rule D requires: "Employees must understand and obey company and department policies, procedures and special instructions" Rule O(1) requires "Employees must report for duty at the designated time and place and must attend to their duties during their assigned working hours. Employees may not be absent from their assigned duty or engage in other than Amtrak business while on duty or on Amtrak property without the permission from their supervisor."

On November 15, 1988 the Carrier promulgated its absenteeism policy. The policy provides:

"Time records will be reviewed to establish employees with unacceptable absenteeism or tardiness. Unacceptable absenteeism or tardiness is defined to be three or more periods of time lost within a 30-day period, or one or more days absent without notification to the corporation (AWOL)."

After determining whether an employee is excessively absent, the Carrier by virtue of its policy, supplies the absent employee with a letter of counseling upon the employee's first offense. The second offense results in a formal Investigation and a two-day disciplinary suspension which can be deferred for six months. If the employee commits a third violation of Carrier's absenteeism policy, that employee is afforded a formal Investigation and the employee can be assessed a total of five days actual suspension. The fourth offense calls for a formal Investigation and 10 days actual suspension. The fifth offense states that an employee may be dismissed.

The matter before the Board, involves Claimant's fourth violation of the attendance policy, which has subjected him to a 10-day suspension. According to the record, Claimant was counselled about his excessive absenteeism on May 27, 1992. On July 21, 1992 he was given a two-day suspension for excessive absenteeism. On January 5, 1993 he was assessed a five-day suspension for his attendance failures.

The Organization first argues in defense of its member that the Carrier failed to afford the Claimant a full and fair Investigation as required by Agreement Rules 24 and 28. According to the Organization, the Carrier's Hearing Officer curtailed its cross-examination in an attempt to establish that the Claimant's absences were excused by the Carrier.

The Organization also argues that the Claimant complied with Rule 28, which requires employees to report to duty unless they are excused by their supervisor. The Organization next argues that the Claimant provided a doctor's note for the two days that he marked off sick. Therefore, the Claimant fully complied with the Agreement's attendance requirements. The Organization next contends that the Claimant was unfairly disciplined because he was unaware of the Carrier's absenteeism policy promulgated on November 15, 1988. The Organization points to the testimony of the Claimant at the Hearing when he admits that he was unaware of the full nature and ramifications of the policy.

Therefore, the Organization urges that fundamental fairness compels the Board to sustain the claim as presented.

The Carrier argues first that the charges were proven that the Claimant was tardy, departed early and was absent from work on the dates as stated in the Notice of Investigation. The Carrier contends that the Claimant's time cards substantiate the unauthorized absences, along with the Claimant's own admission of tardiness, early departures and absences on the dates as charged.

The Carrier also questions the veracity of the Claimant's doctor's note since the note excusing the absences was dated after the Claimant received the official Notice of Investigation. The Carrier argues that tardy doctor's notes do not excuse absences. Moreover, the Carrier argues that the issue is not whether the absences were excused but rather, whether the absences became excessive.

According to the Carrier, the Claimant's absences became excessive as defined in its excessive absenteeism policy dated September 15, 1988. The Carrier also takes issue with the Claimant's argument that he was unaware of its excessive absenteeism policy. The Carrier notes that on three separate prior occasions, the Claimant was counselled and informed of his violations of the policy and received the appropriate progressive discipline as provided by the policy.

Therefore, the Carrier argues the Claimant was fully aware of the Carrier's excessive absenteeism policy and chose to ignore it once again. Consequently, the Carrier contends that the 10-day disciplinary suspension is warranted as a fourth step in its progressive disciplinary policy to address an employee's excessive absenteeism.

We reviewed the entire April 27, 1993 Investigation transcript attached to the parties' Submissions and can find no instances where the Carrier's Hearing Officer denied the Claimant anything less than his full measure of industrial due process as required by the Agreement. Moreover, we find that the Hearing Officer went to great pains to elicit testimony and establish a full and complete record.

The Carrier correctly observes that the crux of the dispute is not whether the absences were excused but rather, whether the absences, even for good cause, became excessive. Here we find that the Carrier proved its case. There is no dispute on the record that the tardiness, early departures and absences occurred on the dates in question. Moreover, the Carrier has a clearly enunciated policy defining excessive absenteeism and a written schedule of progressive discipline to be assessed any employee in violation of that policy. Here we note that the Claimant arrived at the fourth progressive step and that he readily admitted that on three prior occasions he was counselled and disciplined in accordance with the policy. Clearly the Claimant was fully aware of the Carrier's excessive absenteeism policy and despite the fact that he cannot always physically control his attendance, the fact remains that he violated the policy.

It has been stated and restated in many Awards of this Board that even the best employee is of no value unless he or she can report to work as scheduled. The Carrier, in order to run its business, must be able to rely on the regular scheduled attendance of its employees.

Therefore, because we find that the Claimant violated the Carrier's absenteeism policy as charged and that the discipline assessed is in accordance with the Carrier's progressive disciplinary policies, we must deny this claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 9th day of December 1996.