

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13216

Docket No. 13084

98-2-95-2-107

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Dispute - Claim of Employee

(1) That Consolidated Rail Corporation arbitrarily and capriciously reprimanded Machinist R. Stevenson following trial held on March 8, 1994.

(2) That accordingly, Machinist R. L. Stevenson should be paid for all lost time, including overtime, be credited for any and all fringe benefits that would have accrued had not the unjust discipline been imposed, and have his record cleared 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 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.

By letter dated February 11, 1994 Claimant, a Machinist at Carrier's Enola, Pennsylvania Diesel Terminal, was instructed to appear for trial on charges of excessive absenteeism. As a result of an Investigation held on March 8, 1994, Claimant was issued a Letter of Reprimand for his failure to report for duty on January 22 and January 28, 1994 and in conjunction with his prior attendance record. This claim protests such discipline.

The transcript of the trial reveals that Claimant was absent on January 22, 1994 due to illness and on January 28, 1994 due to problems associated with inclement weather. The record reveals that the area was experiencing severe snow and ice storms during this period, and that 21 other employees marked off on January 28, 1994 not including those who took vacation or personal days. The record also contains a prior Letter of Warning for excessive absence issued to Claimant on September 8, 1993 concerning two absences and three late start/early quits between March and August 1993, as well as reference to a counseling session held on September 7, 1993 and Claimant's disciplinary record from 1976 to 1982. Carrier's Attendance Policy requires employees to be at work when scheduled; it provides no exceptions for unusual circumstances or inclement weather. The Policy requires a supervisory review for four occasions of absence within a six month period of time.

Carrier argues that Claimant admittedly violated its Attendance Policy by being absent on January 22 and 28, 1994, and his prior record supported the issuance of discipline to him for excessive absenteeism in this case. It notes that a Letter of Reprimand was very mild considering his past record, relying on Second Division Awards 8228, 8238, 12159, 12302, 12526, 12691, 12741; Third Division Award 22973; First Division Award 24286. Carrier contends that it may discipline an employee for attendance-related absence even if there were legitimate reasons for the absence, such as inclement weather or illness, citing Public Law Board No. 4544, Award 5; Public Law Board No. 5644, Award 1.

The Organization contends that Carrier failed to prove that Claimant's absences on January 22 and 28, 1994 were the result of blameworthy conduct on his part, since they were caused by unusually severe weather conditions and illness, both of which were beyond his control. The Organization also argues that various procedural errors denied Claimant a fair and impartial Hearing, including the fact that Carrier impermissibly relied upon a discipline record well outside the appropriate time period for review under

Carrier's Attendance Policy. It argues that Claimant's record was not that bad, considering his long service, citing Fourth Division Award 4125.

A careful review of the record convinces the Board that there exists substantial evidence to support Carrier's issuance of a Letter of Reprimand to Claimant for his attendance-related violations on January 22 and 28, 1994, and that the Organization's contentions concerning the lack of a fair Hearing are without merit. While there is no doubt that inclement weather and illness may have contributed to Claimant's inability to fulfill his employment responsibility on these dates, Carrier must be able to rely upon employee attendance in order to conduct its business and is empowered to issue discipline for violations of its attendance policy. Second Division Award 12302. Carrier proved such violations in this case, as well as a prior current record of attendance-related discipline, and the Organization failed to show that Claimant was somehow treated differently than other employees similarly situated on these dates or that Carrier's expectations concerning Claimant's attendance exceeded those of other employees. Under such circumstances, the claim must fail.

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 26th day of February 1998.