

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13534

Docket No. 13448

00-2-99-2-46

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(International Association of Machinists and
(Aerospace Workers
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

“That the Kansas City Southern Railway Company (hereinafter referred to as the “Carrier”) violated Rule 29 of the Controlling Agreement, effective April 1, 1980, as amended, between the Kansas City Southern Railway Company and its Employees represented by the International Association of Machinists and Aerospace Workers (hereinafter referred to as the “Organization”) when it wrongfully and unjustly issued a Letter of Reprimand to Pittsburgh, Kansas Machinist P. E. Oreder (hereinafter referred to as the “Claimant”) cited in violation of Carrier Rules 1.15 and 1.13 for alleged excess absenteeism.

Accordingly, we request that for this violation, the letter of reprimand and all reference thereto, be removed from the Claimant’s Personal Record.”

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.

The Claimant was cited for, found guilty of and disciplined (Letter of Reprimand) for excessive absenteeism.

From the record, it developed that the Claimant was absent seven times during the first half of 1997, although the Carrier only cited him for six absences, counting one 2 consecutive day absence as one occurrence.

On July 9, 1997, the Carrier wrote the Claimant the following letter:

"A mid-year review of your personal absentee record for 1997 shows that you have an excessive number of occurrences.

Your total number of occurrences thru June of this year is 6. The average per employee at Pittsburgh is 1 day every 2 months. You are double this amount.

1/25	- Absent 8 hrs - sick
2/22 & 23	- Absent 8 hrs - sick
3/13	- Absent 8 hrs - sick
4/5	- Absent 8 hrs - Personal Business
5/23	- Absent 8 hrs - Personal Business
6/14	- Absent 8 hrs - Personal Business

Note:

- 1). Consecutive days absent - only count as 1 day.
- 2). Jury Duty does not count as an absent day.
- 3). Personal and vacation days do not count as an absent day.
- 4). Partial or absent day due to union business does not count.

Please make 1997 the year you correct your problem of excessive absenteeism.

Should you desire to discuss your absentee record, please feel free to contact me."

By March 18, 1998, the Claimant was absent eight more days, six days from July 1, 1997, to December 31, 1997, and two days from January 1, 1998, to March 18, 1998.

The Carrier in determining the excessive absenteeism resorted to averages of all nine employees working at the Pittsburgh locomotive shop. For the first half of July, the average

of absences was 2.6, for the second half, the average was 2.8, and for the first ten weeks of 1998, the average of absences was .625. In each of the listed segments, the Claimant's absences were at least twice what the Carrier considered as the norm.

The number of cases adjudicated pursuant to the Railway Labor Act involving absenteeism, tardiness, and early quits are numerous. In this dispute alone, the Carrier has furnished 15 Awards from various forums established pursuant to the Railway Labor Act to resolve minor disputes, each involving a charge of excessive absenteeism.

In Award 3 of Public Law Board No. 3959, the neutral stated:

"To prove excessive or chronic absenteeism, the Carrier must demonstrate that Claimant was absent an abnormally high rate over a reasonable period of time. . . ."

In that case, it was established that Claimant:

". . . was absent 50 percent of the time during the calendar year 1983 and 27 percent of the work days through May 18, 1984. . . ."

In Second Division Award 13215, the Claimant was assessed a record mark for being 15 minutes late on one January day and being absent one day in February. This occurred following a warning letter concerning five absences over a six-month period.

In Award 1 of Public Law Board No. 2572, an excerpt from Second Division Award 5049 was noted. It reads:

"Nothing in the agreement obligates the Carrier to attempt to operate its railroad with Employees repeatedly unable or unwilling to work the regular ordinarily accepted shifts, whatever reason or excuse exists for each absence, and even without the computation of work for other employees."

All 15 Awards, except one, found for the Carrier and upheld the Carrier's right to assess the discipline that it did. In the one Award, the discipline was reduced only because the neutral found that the Carrier did not issue a warning letter.

The July 1997 letter the Carrier wrote the Claimant was an advisory letter or at least notification that the Carrier was aware of the Claimant's attendance pattern. It could have,

and in reality should have, been much more exact, nevertheless, the Claimant now knows that the Carrier is concerned about attendance and will not hesitate to follow the progressive discipline pattern which could lead to permanent dismissal.

Regardless of the reasons for the absences, regardless of whether he called in and got permission for each absence, his absences were twice the norm.

The disciplinary process has a twofold purpose, first and foremost to impress upon the employee the necessity to improve his record and, second, as a warning to others.

As stated in Third Division Award 28875:

“The employer/employee relationship demands that employees diligently perform the work for which they are hired. They are expected to fulfill their obligation to work on the days assigned. When they fail in this responsibility, they become part-time employees. A Carrier cannot be expected to operate with part-time employees. The right to discipline employees for excessive or repeated absences, even when they are due to illness, has been recognized and accepted by Referees. (See Award No. 117 Public Law Board 1790 and Third Division Award 26187).”

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 27th day of July, 2000.