

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13608

Docket No. 13488

01-2-99-2-84

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

**(International Association of Machinists and
(Aerospace Workers**

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

- “1. Springfield Terminal Railway Company violated Rule 15 of the controlling Agreement, effective June 1, 1995, as amended, when by letter dated November 3, 1998 the Carrier arbitrarily, capriciously and unjustly issued Machinist James Porter a formal reprimand after an investigation held on October 16, 1998.**

- 2. Accordingly, the decision should be reversed, Machinist Porter exonerated of the charge(s), his record and personnel file cleared of any reference thereto. And he be made whole for any and all losses suffered as a result of Carrier’s arbitrary, capricious and unjust actions, including, but not limited to, time spent at formal Investigation/Hearing of October 16, 1998.”**

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.

On August 19, 1998, the Claimant marked off from his scheduled assignment. After reviewing his absenteeism record, the Carrier determined that the Claimant had missed 27 hours of work time over the previous three months. According to the testimony of Manager P. Walsh, the shop average for this same period of time was ten and six tenth's hours. Walsh testified that the Claimant had been counseled on previous occasions about his absenteeism, and had been warned that another instance of absenteeism would result in a disciplinary Investigation.

Accordingly, the Claimant was issued a Notice of Hearing and charged with excessive absenteeism. Specifically, he was charged with exceeding the "shop average" for the period of June, July and August 1998. Following the Hearing, which took place on October 16, 1998, the Claimant was found to have been responsible as charged and was assessed a formal reprimand.

The Carrier argues that it is responsible for controlling absenteeism as an essential and inherent right of management. The Board agrees with that fundamental premise. A corrective discipline plan addressing absenteeism is proper and should be supported. Management must ensure productivity and efficiency, and progressive discipline can be meted out under a reasonable absenteeism policy or plan to promote such legitimate objectives.

As the Organization correctly points out, however, the Carrier's right to establish and enforce such work Rules is subject to the requirement of reasonableness. The test of reasonableness is whether the policy is arbitrary, capricious or discriminatory.

In the instant case, the record demonstrates that the attendance policy fails to meet that basic test. There is no posted or written absenteeism policy, the Carrier witnesses concede. Instead, an employee is determined to be excessively absent if, after a period of several months, it is determined that he or she has exceeded the "shop average."

The difficulties with such an approach are immediately apparent. Employees have no advance notice as to what is expected of them in terms of regular attendance. There is no prior notification as to which absences are excluded from the shop average and which absences are included. In fact, since the shop average is relative, an

employee may find that instances of absenteeism deemed acceptable for one quarter are unacceptable the next, depending upon the overall rate of absenteeism among other employees. Because the absenteeism policy is based on a relative standard subject to shifting rates of absence among employees over a period of time, and because employees are not informed about whether they have succeeded in meeting that shifting standard until well after the fact, the policy falls short of meeting the reasonableness requirement inherent in any attendance policy. The claim must be sustained on that basis.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**


Dated at Chicago, Illinois, this 4th day of June, 2001.

**Carrier Members' Dissent
to Award 13608 (Docket 13488)
Referee Kenis**

The Majority in this matter acknowledges that Claimant Porter's absenteeism was almost three times the average for his shop. The record substantiates that, in his two years of service, Claimant had been counseled about his absenteeism and that the absences here were either the day before or after his rest days. The Majority also acknowledges that Claimant, "...had been warned that another instance of absenteeism would result in a disciplinary Investigation."

Instead of dealing with the foregoing factual recital, the Majority contends that Carrier's attendance policy is not reasonable. It is asserted that employees have, "no advance notice of what is expected;" there is, "...no prior notification as to which absences are excluded..." and that "...absenteeism deemed acceptable for one quarter are not acceptable the next..." as justification. In so far as being applicable to the Claimant, the record substantiates his knowledge of his unacceptable attendance and he had been warned that actual discipline was the next step. To conclude that a reprimand was not appropriate here ignores the record.

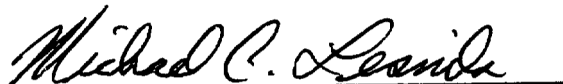
We Dissent.



Paul V. Varga



Martin W. Fingerhut



Michael C. Lesnik

