

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13777

Docket No. 13651

03-2-02-2-9

The Second Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

**(Brotherhood Railway Carmen Division
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

- 1. That the Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13, when they arbitrarily suspended Wilfred L. Bennett from service for five (5) working days as a result of an investigation held on September 19, 2000.**
- 2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Wilfred L. Bennett in the amount of eight (8) hours pay, for each workday he was withheld from service, commencing October 9, 2000 through and including October 13, 2000. Additionally, he is to be compensated for attending this investigation and further, remove any correspondence in regards to this investigation from his personal record and file."**

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 worked as a Carman at the Carrier Repair facility in Waterville, Maine. On September 13, 2000, the Claimant was directed to appear at a formal Investigation to be held in the main conference room of the Mechanical Department, Waterville, Maine. The purpose of the Hearing was to determine the Claimant's responsibility, if any, in allegedly being excessively absent during the period of January 1, 2000 through September 13, 2000.

The Hearing was held on September 19, 2000. After reviewing the evidence presented, the Carrier notified the Claimant by letter dated October 5, 2000, that there was sufficient evidence to support the charges and assessed a five-day suspension.

The Carrier argues they have tried to correct the Claimant's attendance problem over the last four years. The Claimant has been counseled, issued warning letters, participated in conferences and finally disciplinary proceedings. The Claimant has simply not responded to progressive discipline. It was pointed out that he had 60 hours of un-excused absence from January 1, 2000 through September 13, 2000. This included two days of sick leave and the remaining was personal business. In all of these absences the Claimant called off only minutes before his shift so that no arrangements could be made in advance. Furthermore, the Claimant's absences are twice the shop average.

The Carrier defends its use of the shop average to compare absenteeism rates. They argue the practice of using the shop average has been upheld in prior Awards on this property as well as others.

The Carrier is not unsympathetic with the Claimant's need to take time off to take care of his late mother's estate. However, they say he never asked for permission to be off and never attempted to minimize the time off he took.

Moreover, the Claimant has been given significant time off under the Family Medical Leave Act for other matters.

The Carrier argues that prior Board Awards have upheld the introduction of a claimant's prior discipline record and the utilization of two Hearing Officers.

The Organization assures that the Carrier has violated the terms of their Agreement, in particular Rule 13, when it arbitrarily suspended the Claimant for service for five days. They minimize the Claimant's absence by stating he was only absent 60 hours out of a possible 1400 hours. They argue the Carrier's position on excessiveness is distorted. They point out that two of the Claimant's absences (16 hours) were due to illness. They cite numerous Board Awards which held that the Carrier could not use compensated (contractual) sick days against employees in any attendance policy investigations.

They say the Carrier committed an injustice when they disciplined an employee who was in attendance 97% of the time and only absent 3% of the total time. They contend this was not excessive. They point out that much of the time the Claimant was off was because he had to deal with his deceased mother's estate. They say the consolidation of shops by the Carrier over the past 20 years has meant employees must travel great distances to get to work. This was the case with the Claimant and made it necessary for him to miss the entire day for personal business.

The Organization challenges the Carrier's introduction of the Claimant's prior discipline record. They hold this was prejudicial to the Claimant because it could lead any reviewing officer into an inadvertent guilty verdict.

The Board appreciates the Organization's concern that contractual sick days are counted towards excessive absenteeism. We certainly recognize there are situations when an employee's use of these days both those to which he is entitled annually and those which he has banked may be used with impunity. Surely, Neutrals would be reticent to allow an employee to be disciplined who has

demonstrated good attendance over the years and has been stricken with a prolonged illness requiring the use of all of his available sick leave. That is the very reason for banking sick days. However, we are all familiar with individuals who carelessly use their sick days every year no matter how minor or legitimate the illness. It is most often these employees who develop a pattern of absenteeism and are more likely to abuse the negotiated benefit.

The problem with the Claimant was his apparent disregard for the Carrier's previous admonishments concerning his attendance. We would have a great deal more understanding of his situation if he had only arranged in advance to be absent for his personal business. We might excuse the days off for illness, recognizing their unpredictability. However, the matters dealing with an estate can easily be scheduled in advance and the Claimant had every obligation to seek permission to take that time off, especially since he was aware the Carrier based discipline on an employee's attendance compared to the shop average. The Claimant created a problem for the Carrier and for his co-workers as well as for himself. Under the circumstances, he was in violation of the Carrier's attendance policy and the discipline was warranted.

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 24th day of October 2003.