

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: { System Federation No. 109, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Consolidated Rail Corporation

Dispute: Claim of Employees:

- (a) That the Carrier violated the controlling agreement when, on May 6, 1977, it assessed ten day actual suspension to Welder, James M. Driscoll, ConRail Repair Facility, Reading, Pa., as a result of hearing and investigation conducted on April 7, 1977. The ten-day actual suspension was May 9, 10, 11, 12, 13, 16, 17, 18, 19 and 20, 1977.
- (b) That accordingly, the Carrier be ordered to compensate Welder James M. Driscoll the ten days actual suspension as well as any other compensation the claimant would have earned during the ten-day period he was service the discipline; and further, that the Carrier remove all record of this discipline and claimant's service record be restored, unimpaired.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived right of appearance at hearing thereon.

Claimant received a ten-day actual suspension because of his "unsatisfactory attendance record" during the period from September 29, 1976 through March 15, 1977. In its letters prior to the investigative hearing, the Carrier cites 23 separate instances in which the Claimant was absent, late or left early.

The investigative hearing was conducted in a fair and proper manner, and the record shows little or no evidence to contradict the Carrier's charge and later determination that the Claimant's attendance record was unsatisfactory.

Both the Carrier and the Organization refer to Rule 22, which reads as follows:

"In case an employe is unavoidably kept from work he will not be discriminated against. An employe detained from work on account of sickness or for any other good causes shall notify his foreman as early as possible. When known, employes are expected to make advance arrangements if necessary to be absent."

There is no evidence that the Claimant was "discriminated against", and the record shows instances of his failure to notify his foreman "as early as possible" as to absence or tardiness. As held in many previous awards, Rule 22 cannot be used as a defense for generally unsatisfactory attendance. See Award No. 7748.

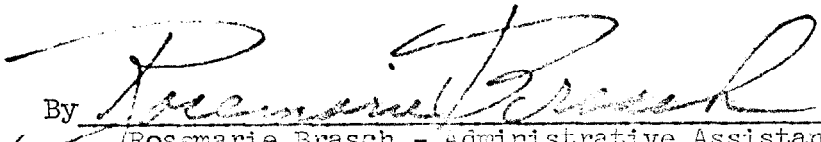
A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of September, 1979.