

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { International Association of Machinists and  
 { Aerospace Workers  
 { Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. That under the current Agreement and the Chicago and North Western Transportation Company schedule of rules, the Carrier unjustly suspended Machinist Dean R. Nichols from service effective November 12, 1977, for a total of forty days.
2. That Carrier compensate Dean R. Nichols for payment of all wages lost while suspended from service during the period November 12, 1977 through December 21, 1977, and for other benefits during this period, including credit for time lost during this period for vacation and other rights.

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.

The Claimant, Mr. Nichols, at the time here under consideration, was employed as a machinist at the Carrier's repair shop at Oelwein, Iowa. His regular assignment was 7:00 a.m. to 3:00 p.m. with rest days of Saturday and Sunday. He alleged that he called his foreman on the morning of the 17th of October to report that he was taking medicine under doctor's orders and would be unable to work.

On October 19, 1977, he was admitted to the hospital where he stayed until October 23. He remained under doctor's care and was released for work on October 31, 1977. During this period of time he received four separate notices of a formal investigation covering the periods October 17 and 18, October 19, 20, 21, October 25, 26, 27 and October 28, 31. The first notice called for a hearing date of October 21, but that was later changed to November 4, to coincide with the hearing date of the other three notices. All notices read as follows, with the exception of different dates in each notice:

"You are directed to appear for formal investigation ... (to determine) your responsibility for not protecting your assignment (dates) and not receiving authority to lay off as directed by J. T. Seiberts' letter September 2, 1977."

The hearings were held separately, all on the same date, November 4, 1977. As a result of the hearings, the penalty herein complained of was assessed.

The record is rather voluminous, including four complete transcripts with normal claims and counterclaims being made. In the case at bar it is not necessary to deal with all the positions taken by the parties.

The gravamen of the company's position resides in a letter signed by the Assistant Division Manager, dated September 2. In that letter he informed the Claimant that due to a poor record of absenteeism it would be necessary, except in emergency, for him to obtain permission from him or two other named supervisors before laying off.

The Division General Foreman, at several places in the hearings, testified that the Claimant did call his supervisor as required by the agreement, but failed to contact one of the three persons named in the letter. This factor, together with the wording of the notices, makes it clear that there is no charge that the basic agreement was violated. The Carrier relies upon the instructions contained in the letter as a basis for its penalty.

The Assistant Division Manager - Mechanical, who signed the letter, testified with respect to his knowledge of events essentially as follows:

- (a) that he was informed through the supervisor on October 24 that the Claimant had been in the hospital and could not return to work for a few days;
- (b) that he considered being in the hospital an emergency.

He did not indicate the point at which the emergency might be ended. However, it is reasonable to assume that the employee could not be expected to return to work after such a serious illness without approval from the physician. To act otherwise would be harmful to both the Carrier and employee.

It should be noted that, irrespective of the Carrier's concern with a larger absentee problem, the only issue before this Board is whether the Claimant's actions during the period of time contained in the notices warranted the penalty assessed.\*

Based on the foregoing and the entire record, this Board finds that due to the admitted emergency nature of the illness the technical failure of notice contained in the letter did not warrant the penalty. Claim sustained in accordance with Rule 35.

Form 1  
Page 3

Award No. 8233  
Docket No. 8083  
2-C&NW-MA-'80

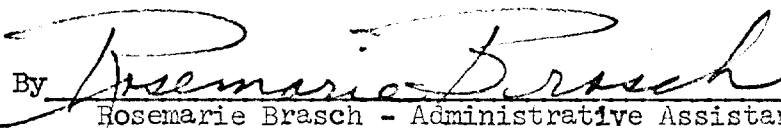
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Claim sustained.

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 16th day of January 1980.

CARRIER MEMBERS' DISSENT  
TO  
AWARD 8233, DOCKET NO. 8083  
(Referee McMurray)

It is not a new revelation that employee unexcused absences can create hardship and havoc on the orderly performance of work in this industry as in any other industry.

Recent Award 8228 (Larney) again reiterated the basic position of this Board:

"Previous decisions of our Board have held that the employment relationship demands that an employee fulfill the job and assignment for which he was employed and furthermore, that an employer does not have to retain in its employ any worker who is unwilling to fulfill his obligation" (Emphasis added)

See Second Division Awards:

6240 - Shapiro  
6606 - Yagoda  
8013 - Franden  
8034 - Roukis  
8061 - Dennis  
8238 - Roukis

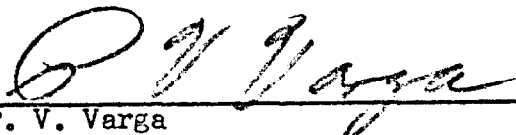
The record in this case substantiated that Claimant did have a severe absenteeism record and that the Carrier's specific instructions to the Claimant was a last informal effort to induce Claimant to mend his ways.

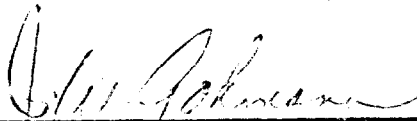
Claimant was disciplined for his unexplained absence on October 17, 18, 25, 26, 27, 28 and 31, 1977. Claimant admitted his absence on October 17 and 18 was not authorized; he contended that his absence on October 25, 26, and 27, were due to his "continuing illness" predicated on the one day permission granted him, in accordance with the

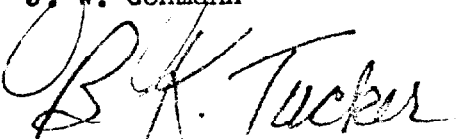
special instructions for September 26, 1977; and he did not make any attempt to notify the Carrier on October 28 and 31 again, simply relying on a prior phone call on October 24, 1977.

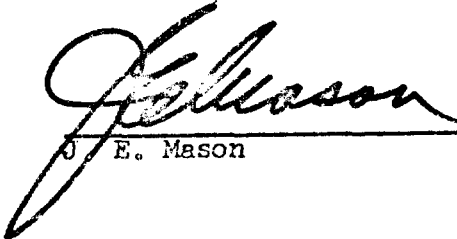
The "admitted emergency nature" relied upon by the Majority was a hospitalization for which Claimant was not disciplined and for which Carrier was informed only after the fact.

This Award is an errant aberation dispensing with the Carrier's right to expect an employee's regular attendance at work and proper notification when absence is necessary. While finding that Claimant's "technical failure of notice" was proven, to be disciplined therefore was not warranted. Such results are clearly inconsistent and require dissent.

  
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P. V. Varga

  
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J. W. Gohmann

  
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B. K. Tucker

  
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J. E. Mason