

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

Parties to Dispute: (Brotherhood of Railway Carmen of the United
(States and Canada
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(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Coach Cleaner Ronnie K. Davis was unjustly assessed thirty (30) days actual suspension on October 11, 1978, effective October 24, 1978.
2. Coach Cleaner Ronnie K. Davis was erroneously charged with excessive absenteeism for his absences on September 7, 11, 14, 15, and 21, 1978.
3. That the Chicago and North Western Transportation Company be ordered to compensate Coach Cleaner Ronnie K. Davis for all time lost while he was unjustly suspended; and that such discipline be removed from his file in accordance with Rule 35.

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.

After a hearing held on October 11, 1978, Claimant was assessed a thirty (30) day actual suspension for excessive absenteeism and failure to protect his assignment on September 7, 11, 14, 15 and 21, 1978.

Claimant contends that said absences were for valid and sufficient reasons; that he notified Carrier of his need to be absent on said days in accordance with Carrier's procedures; and further, that he provided Carrier with proof so as to verify the legitimacy of these absences.

Claimant's Organization argues that Claimant is regularly in attendance; that he is punctual in reporting for work; and that the cited absences are unusual and thus are not reflective of his overall attendance record. Specifically on this point, Organization maintains that Claimant's past record has markedly improved within the past several years, and the September 1978 absences were the first such occurrences within the last three years. Organization further contends that

Carrier's actions in this instance establishes a dangerous policy of requiring employees to work when they are ill and not in full control of their faculties.

As its final argument, Organization maintains that Claimant's suspension was procedurally defective because he was never warned by management concerning his absences, and also because the hearing officer conducted the investigatory hearing in an unfair manner since he allowed into evidence testimony from Carrier witnesses which was hearsay, assumptions and mere suspicions on their part.

Carrier contends that Claimant's absences were in violation of Rule 14 which reads:

"Employees must report for duty at the designated time and place. They must be alert, attentive and devote themselves exclusively to the Company's service while on duty. They must not absent themselves from duty, exchange duties with or substitute others in their place, without proper authority."

Regarding the applicability of Rule 14, Carrier charges that Claimant did not secure permission in advance from his supervisor for his absences, and also that Claimant failed to provide proper documentation in order to validate the reasons for said absences. Continuing on, Carrier further argues that Rule 14 requires that an employee must request permission in advance for his intended absence, and in this instant case, Claimant's mere notification on the same morning as his absence, or after his shift had already started, was improper. Carrier also contends that Claimant's stated reasons for his absences lack credibility because Claimant could have handled these matters at some other non-working time and also because the documentation which Claimant offers in support of the validity of said absences are unacceptable since they are either vague, or did not correspond with the dates of the absences, or, in the case of the September 7 absence, Claimant completely failed to call-in, and he failed to produce any documentation whatsoever to verify his alleged illness on that day.

As to Organization's charge that, in this instant case, Carrier is developing a dangerous policy of requiring workers to work when they are ill thus imperiling their health and safety, Carrier disputes this charge by contending that its policy is not to require workers to work when they are ill, but rather only to require proper permission with advanced notice and proper documentation of an employee's absences.

Lastly, Carrier argues that Claimant's thirty (30) day suspension is proper since Claimant has been warned numerous times concerning the unacceptability of his absenteeism and tardiness, and in this regard Claimant has been issued several letters of warning as well as a fifteen (15) day deferred suspension.

This Board has thoroughly reviewed this instant case and is convinced that there is nothing in the record which would support Organization's claim regarding the alleged improper conduct of the hearing officer. Despite the fact that some of Carrier's witnesses may have strayed somewhat in their responses and offered testimony which was opinionated, the record clearly indicates that such offerings were identified by the hearing officer as having little or no bearing upon the disposition of this matter; and, therefore, such statements were not, in any way, prejudicial to Claimant's case.

Now to the merits of this case.

The major thrust of Carrier's position herein is that Claimant did not give proper advanced notice of his intended absences; that his reasons for said absences were unacceptable; that he was warned of the consequences of his continued unacceptable absences and tardinesses; and that Claimant's previous record regarding absenteeism and tardiness warranted the penalty which was assessed.

While there can be no dispute that Claimant was absent as charged, and that Claimant did not give proper advanced notice of his intended absences or seek Carrier's permission for same, the record does not support Carrier's position regarding the other arguments which have been advanced.

The rationale for the above determination is predicated upon the following three considerations.

First, Claimant was not specifically warned by his supervisor concerning the September 1978 absences as alleged by Carrier. The testimony of Mr. Stanley Sciblo, Car Foreman, is sufficiently determinative on this point. To wit:

- "Q. (by Mr. Diesch) Mr. Sciblo, are you directly responsible for the supervision of R. K. Davis, Coach Cleaner?
- A. (by Mr. Sciblo) Yes, he works for me.
- Q. Of the dates mentioned, September 7, September 11, September 14, September 15, and September 21, 1978, did you speak to Mr. Davis about his excessive absenteeism?
- A. Yes, well, actually I was talked to Art Davis, how come he's taking so many days off, how come he don't call, you know. What he told me once, he said, got no phone.
- Q. Mr. Sciblo, did you talk to him about the aforementioned dates?
- A. Not exactly I talked to him, but I was mentioned why you laying off so many days, you know.
- Q. Are you stating that you had talked to Mr. Davis about absenteeism, but not specifically on these five dates?
- A. No I didn't. I didn't tell him exactly about those dates, you know, but I talked to him. He's taking so many days, you know, his working days". (Emphasis added by Board)

Secondly, despite Carrier's contentions to the contrary, Claimant's stated reasons for his absences and his documentation thereof, save that of September 7,

1978, are clearly both legitimate and valid. Absent any indication that said reasons and documentation were fraudulent, forged, or otherwise untrue, they constitute sufficient evidence to support Claimant's contention that he was where he said he was on the dates in question, and for the reasons which he stated.

Thirdly, Carrier's contention that Claimant's attendance record contains numerous similar infractions for which Claimant previously received several letters of warning as well as a fifteen (15) day suspension, though a true statement in itself, is not a complete and fair characterization of Claimant's record since a careful examination of that document shows that the great majority of Claimant's absences which are cited by Carrier, occurred several years previously, with the last such incident ("letter of warning - absenteeism and tardiness") being recorded on October 10, 1977. Thus this record clearly demonstrates to this Board that Claimant has drastically improved his attendance from that which he had amassed previously in the earlier years of his employment with Carrier; and because of this fact, together with those favorable considerations posited above, Claimant's thirty (3) day suspension, under the circumstances, was excessive, and, therefore, improper. Discipline reduced to fifteen (15) days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 24th day of September, 1980.