

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to restore Machinist Steve Lynn to service and compensate him for all pay lost up to time of restoration to service at the prevailing Machinist rate of pay.
2. That Machinist Steve Lynn be compensated for all insurance benefits, vacation benefits, holiday benefits, and any other benefits that may have accrued and was lost during this period, in accordance with Rule J-1 (e) of the prevailing Agreement which was effective April 1, 1976.

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 waived right of appearance at hearing thereon.

Claimant was dismissed from service on April 6, 1979 following an investigative hearing held on March 29, 1979 on the following charges:

"For your continued absenteeism and for failing to work a 40 hour week, as per your contract, on the dates listed below:
2-22, 2-23, 2-24, 2-25, 3-1, 3-2, 3-3, 3-4, 3-11, 3-14, 3-17"

He appealed this disposition.

In defense of his position, Claimant contends that he complied with the controlling Agreement, particularly, Rule 22, since he notified Carrier that he would be absent on the aforesaid dates.

Carrier contends that his absences were not excused by his perfunctory compliance with Rule 22, since he was successively disciplined on three recent occasions for excessive absenteeism. It asserts that Rule 22 was not intended to be used as a defense against chronic absenteeism and the decisional law of the National Railroad Adjustment Board affirms its interpretational position. It

argues that he was progressively disciplined for the same offense, which resulted in a 10 day suspension on February 2, 1977, a 30 day suspension on April 21, 1977 and a 60 day suspension on September 21, 1978.

In our review of this case, we concur with Carrier's position. The basic issue before this Board is the proper application of Rule 22, which is verbatimly quoted hereinafter:

"Rule 22 - Absent From Work

An employee unavoidably detained from work on account of illness or for other good and sufficient cause shall notify his foreman not later than the close of the first days of absence, if possible."

In previous awards of this Division, involving the same rule and the same Carrier, we pointedly stated that Rule 22 was not intended to condone or excuse excessive absenteeism. By themselves, the dates of absence delineated in the March 20, 1979 notice of investigation might be protected, if Claimant had complied with the notification procedure of Rule 22, but when his prior disciplinary record for excessive absenteeism is considered within the context of our judicial holdings, we cannot conclude that Rule 22 condones his absences. In Second Division Award 7748, which we find controlling herein, we stated in pertinent part that:

"In addition, it would be a misreading of Rule 22 to use it in defense of the employee's actions in the present case. The provisions of Rule 22, whatever other purposes they may serve, are not a defense against chronic absenteeism. As held many times before the Board, the employer has a right to expect regularity in attendance."

There are no mitigating factors in this dispute to modify this general principle. We upheld this position in Second Division Award 7803, wherein we stated:

"As explained in Award 7748 and numerous previous awards, Rule 22 has specified purposes requiring absence reporting but does not by itself, serve to condone absenteeism ... aggravated in this instance over a period of at least nine months. Further, Rule 22 refers to 'good and sufficient causes' which were not found in this instance."

Claimant had been progressively disciplined on three prior occasions for the same offense. He was again excessively absent on the aforementioned dates. To argue that the latter absences were protected under Rule 22, in view of our previous holdings, vitiates the principle of stare decisis and renders the precedential value of our awards meaningless. We recognize, of course, that Claimant was experiencing personal problems, but this does not excuse his recent absences, when his discipline record for absenteeism is thoughtfully weighed. We will deny the claim.

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 January, 1982.

