Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 9022 SECOND DIVISION Docket No. 9005 2-C&O-CM-'82

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

Parties to Dispute:	Brotherhood Railway Carmen of the United States and Canada
\langle	Chesapeake and Ohio Railway Company

Dispute: Claim of Employes:

- That Freight Car Repairer-Tentative, Harold L. Hinkle, Jr., was unjustly dismissed from service as result of investigation held in office of General Plant Manager at Raceland Car Shop at 10:00 a.m., Monday, June 11, 1979 in violation of Rule 37 of the Shop Crafts Agreement.
- Accordingly, Harold L. Hinkle, Jr. is entitled to be restored to service with seniority rights and all other benefits that are a condition of employment 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.

The Claimant was charged by Carrier with excessive absenteeism. By letter of May 9, 1979, Claimant was notified of an investigation to be held on May 31, 1979. He was charged with being absent a total of 89 days since November 1978. The certified mail was signed for by Mrs. Harold Hinkle on May 14, 1979. By subsequent letter of May 31, 1979, the investigation was rescheduled for June 11, 1979. This certified piece of mail was signed for by Harold Hinkle, Sr., on June 2, 1979. Claimant did not appear. The local Chairman and Assistant Chairman were present.

The Organization charges the Carrier's actions on June 11, 1979, were arbitrary and capricious, and the discipline rendered unjust and severe. Claimant was not present and deprived of an opportunity to defend himself. Receipt of certified mail was not that of Claimant. Carrier has no knowledge Claimant received letter. Lastly, the Organization argues that, by not setting forth the actual days of absence, Carrier failed to set forth a precise charge under Rule 37. Form 1 Page 2 Award No. 9022 Docket No. 9005 2-C&O-CM-'82

The Carrier's letter of May 9, 1979, advised Claimant he was charged with excessive absenteeism totalling 89 days from November 1978, broken down as follows: 5 days sickness, 1 day personal business, 1 day transportation, 1 day family sickness, 81 days no report in direct violation of Rule 21 of the Shop Crafts Agreement. This letter, in accordance with past Board decisions, met the requirement of being sufficiently precise in order for Claimant to understand the charge and adequately defend himself against it. The certified letter of May 31, 1979, was sent to the Claimant's address of record and the same address used in the May 9, 1979, notice of charge and investigation. The evidence supports a conclusion the contested letter of notice was received at Claimant's residence in a timely and appropriate manner.

Sixty-six percent absence over a 135 working day period is excessive. Furthermore, the 81 instances of "no report" included amongst the 89 absences disclose no reason or good cause for these specific "no reports". Under any acceptable definition of excessive absenteeism, this Claimant's record falls within such parameters. The Carrier conducted a fair and impartial investigation notwithstanding Claimant's non-attendance. The evidence supports the charge of excessive absenteeism. There is absolutely no merit in disturbing the conclusions reached or the penalty imposed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

Attest: Acting Executive Secretary National Railroad Adjustment Board

Administrative Assistant osemarie Brasch

Dated at Chicago, Illinois, this 14th day of April, 1982.