

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

Parties to Dispute: (Oil, Chemical and Atomic Workers International Union
(Delray Connecting Railroad Company

Dispute: Claim of Employees:

Claim of O.C.A.W. Local 7-358 that:

- (1) The Company has refused to pay Lonnie Baker Welder-Apprentice Class C for the days of May 16, 17, and 18, 1979 even though he was on an absence caused by an occupational injury (Grievance dated May 30, 1979).
- (2) Lonnie Baker Welder-Apprentice Class C be compensated for all wage loss suffered, and that he be made whole in all respects.

Claim of O.C.A.W. Local 7-358 that:

- (1) The Company refused to allow Lonnie Baker Welder-Apprentice Class C to return to work on June 25, 1979 even though his doctor had approved him returning to work on that date (Grievance No. 100).
- (2) Lonnie Baker Welder-Apprentice Class C be compensated for all wage loss suffered and that he be made whole in all respects.

Claim of O.C.A.W. Local 7-358 that:

- (1) The Company refused to continue to pay Lonnie Baker Welder-Apprentice Class C for an occupational injury suffered earlier in the year (Grievance No. 101).
- (2) Lonnie Baker Welder-Apprentice Class C be compensated for all wage loss suffered and that he be made whole in all respects.

Claim of O.C.A.W. Local 7-358 that:

- (1) The dismissal of Lonnie Baker Welder-Apprentice Class C was without just and sufficient cause and on the basis of unproven charges (Grievance No. 117).
- (2) Lonnie Baker Welder-Apprentice Class C be reinstated with all rights unimpaired and that he be compensated for all wage loss suffered and that he be made whole in all respects.

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 were given due notice of hearing thereon.

These four claims are interrelated in that they concern the absences of the Claimant following alleged occupational injuries on February 15 and March 20, 1979. Two investigative hearings were held, one as to the circumstances of the accidents and the second as to Claimant's absence from work from May 25 to June 12, 1979. The hearings were somewhat argumentative as between the hearing officers and the Claimant, but there was little dispute as to the facts which were developed.

From the record, it may be concluded that the Claimant failed to keep numerous appointments with the Carrier's medical clinic. He made one telephone call to the Carrier during the disputed period of absence, but, according to the employe receiving the call, the information supplied was not conclusive. The Carrier found, after investigation, that the Claimant had failed to report for work or to notify the Carrier concerning his absence. Article IV, SENIORITY, Section 4 of the Agreement reads in pertinent part as follows:

"Section 4. An employee, subject to this Agreement shall lose his seniority for the following reasons only: ...

(e) If for any reason he is absent from his work for a period of five (5) consecutive working days (Saturdays, Sundays and Holidays excluded) without notifying the Company, except in justifiable emergencies. ..."

As to the claims relating to pay, the Carrier asserts without contradiction that the Agreement does not provide for such pay and that the Carrier makes such payments only if the employe seeks and accepts treatment from the Carrier's medical clinic. The record shows that the Claimant failed to keep numerous appointments for such treatment.

In view of the employe's brief period of service and his extended record of unsatisfactory attendance, the penalty of dismissal is not excessive. On the same basis, the Board finds no merit in the claim related to suspension prior to the initial investigation concerning the alleged accidents.

A W A R D

Claims denied.

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Award No. 9448
Docket No. 8466
2-DC-OCAW-'83

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 20th day of April, 1983.