

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

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(A.F.L. - C.I.O.
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(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be order to remove the discipline of a letter of reprimand from the record of Machinist W. DiDonna.
2. The Agreement effective May 1, 1979 is controlling.

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 notified on April 29, 1980 to attend a trial on May 6, 1980 on a charge of excessive absenteeism. After two postponements, the trial was held on June 5, 1980, following which the Claimant was assessed the discipline of reprimand.

The Organization protests that the trial was not further postponed in order to allow its local President, who was in the hospital at the time, to represent Claimant. We have reviewed the record in its entirety and found no evidence that the absence of the Local Union President, who was the Claimant's choice to represent him, served to prejudice the Claimant's rights. Carrier was under no obligation to keep postponing the trial. It was, however, under obligation to afford the Claimant a fair and impartial trial. The record shows that the Carrier met its obligation in this regard because the Claimant was well represented by two assistant committee-men and all involved were able to cross-examine witnesses.

Concerning the charge itself, the Claimant's record of absenteeism was read into the hearing record by the Carrier. There is a legitimate dispute, however, as to which of the dates used by the Carrier may be considered by the Board. However, as evidenced by the joint submission signed by the parties on the property, the dates

of April 27 and 28, 1980, during which the Claimant was absent and did not in a timely fashion notify the Carrier of his absence, were agreed upon by the parties.

The Organization also contends that while the Claimant was not charged with failure to mark-off, the Carrier, in effect, used such a charge to arrive at a penalty. The Board rejects this argument because failure to report for duty and failure to mark-off, in the case before it, has no distinction. As long as the individual knows what the charges are against him, as the Claimant did, the specific rule does not have to be cited. The claim is denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1983.