

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 9599
Docket No. 9406
2-WT-CM-'83

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

Parties to Dispute: (Brotherhood Railway Carmen of the United States and Canada
(The Washington Terminal Company

Dispute: Claim of Employees:

1. The Washington Terminal Company improperly divided the absence, due to one continued illness into two charges in order to increase the degree "of punishment" it administered Car Cleaner W. I. Wallace. The Washington Terminal Company so divided the allegation and discipline in violation of the controlling agreement, specifically rules 18 and 29, when it held investigative hearings on August 22, 1980 and September 24, 1980.
2. Accordingly, Mr. Wallace should be made whole in line with rules 18 and 29. The Washington Terminal Company should be ordered to deal properly with the two cases by compensating Mr. Wallace for his net wage loss as well as for any other loss he may have been caused to suffer by the Washington Terminal's miscarriage of justice. Both charges should be expunged from his record.

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.

The Claimant is a Car Cleaner with approximately two and one-half years' service at the time of the incidents giving rise to this case. On August 6, 1980, he was charged with the infraction quoted below:

Excessive loss of time from duty during the months of April, May, June and July, 1980, as follows:

April 1980 - 16, 17 and 23.

May 1980 - 2, 3, 4, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30 and 31.

June 1980 - 1, 15 and 21.

July 1980 - 9, 10, 11, 17, 18, 19, 20, 23, 24, 25, 26 and 27.

As a result of an August 22 investigation of the incident a formal reprimand was placed in his service record.

On September 3, 1980, the Claimant was again charged with the same offense:

Excessive loss of time from duty during the month of
August 1980, as follows:

August 1980 - 3, 6, 7, 8, 9, 10, 13 and 14.

A formal investigation followed and, as a result, the Claimant was suspended for three days.

The Organization argues that both the reprimand and suspension are in violation of Rules 18 and 29, quoted in pertinent part below:

Rule 18

In case an employee is unavoidably kept from work he will not be discriminated against. An employee detained from work on account of sickness or any other good cause shall notify his foreman as early as possible . . .

Rule 29

No employee shall be disciplined without a fair hearing by designated officer of the Carrier . . .

The Organization notes that in general the Claimant's absences were directly related to his legitimate illnesses (hypertension and arthritis) and that according to Rule 18 he should not have been disciplined.

Second, the Organization maintains, the Claimant provided medical verification of his absences. In spite of this, the Carrier still punished him for absences beyond his control.

The Organization's final major argument is procedural and twofold. On the one hand, it asserts that the Carrier issued two sets of charges against the Claimant for absences related to the same continued illness. This enabled the Carrier to increase the severity of discipline by using the reprimand as a stepping stone to the 3-day suspension. And on the other, the Organization argues that the investigatory hearings were not fair and impartial.

The Board has carefully evaluated the Organization's arguments, but concludes that they are without support in the record. This is particularly true with respect to the Claimant's "medical verification" of his absences. He missed three days in April (16, 17 and 23) and submitted no documents indicating he had seen a doctor on any of those days. He was absent on May 2, 3 and 4 without seeing a doctor. And he submitted a slip from a Dr. Nash covering his absences of May 17 to June 3, yet he did not see Dr. Nash on any of those days except June 3,

Thus, the seriousness of the Claimant's illness and the validity of the Dr.'s slip for the days prior to June 3 is highly suspect.

And the Claimant's excuse for his absence of Saturday, June 21 stretches credulity beyond acceptable limits. He reportedly did some home repair for his elderly mother. As noble as such a gesture seems, the Board wonders why he did not help her on either Monday or Tuesday, his scheduled days off.

The Claimant also missed several days' work in July, including the period from the 17th through the 27th. He did not see Dr. Nash during this period, yet submitted a disability certificate from Nash indicating he had been incapacitated from July 15 through 29. Again, the Board wonders how the Dr. could possibly verify such illness without seeing the Claimant during the period in question.

There are similar flaws with the Claimant's August absences as well. On balance therefore, the record does not support the Organization's contention that the Claimant's absences were for good cause. It is clear that he suffers from arthritis and hypertension, but the record does not contain enough evidence to convince the Board that his absences between April and August, 1980, were related to those illnesses.

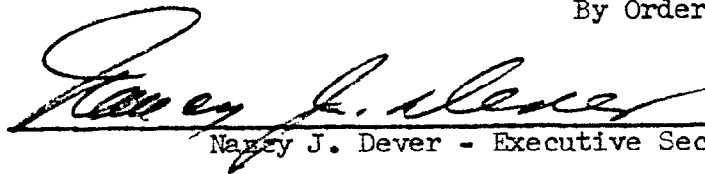
With respect to the Organization's procedural arguments, the Board notes that such arguments were not raised during the handling of this case on the property. It would therefore be improper for the Board to consider them now.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of August, 1983.