

The Second Division consisted of the regular members and in addition Referee Josef P. Sirefman 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 L. L. Crosby 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 L. L. Crosby 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 7-A-1 (e) of the prevailing agreement effective May 1, 1979.

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 employes 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 Larry L. Crosby, a machinist with the Carrier since November, 1974 was served with an April 24, 1980 Notice of Investigation charging "1. Failure to report for duty on April 8, 9, 10, 11, 14, 15, 16, 21, 1980" and "2. Failure to work all the hours of your position on April 7, 1980: worked 6.4 hours". A trial was held on May 30, 1980 and Claimant was subsequently dismissed from service on June 3, 1980.

Certain procedural arguments were raised for the first time at the Board level by the Organization. It would be inappropriate for the Board to consider matters not raised on the property. As Referee D. Eischen held in Second Division Award No. 7122: "It is too well understood to require documentation that we will not consider such de novo arguments which were not aired on the property". Also see Second Division Awards 7484 and 7853.

In any event, the Notice of Investigation provided Claimant with sufficient particularity so as to prepare a defense. Claimant admitted in the transcript of the trial that he had been absent as charged in the Notice of Investigation. The doctor's note (signed by the doctor's secretary) proffered by Claimant does not cover two days of his absence, and as for the remaining days the note fails to indicate the nature of the illness which prompted his absences. Indeed, Claimant failed to follow the instructions in the note to report to duty on April 15th without restrictions. In sum, the absences remain unjustified, and there was substantial evidence to sustain Carrier's decision to discipline Claimant.

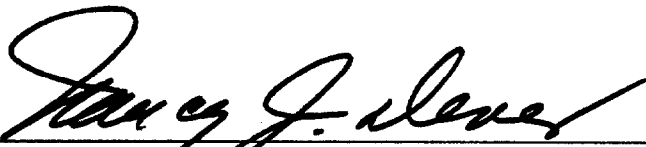
In determining the penalty, a review of Claimant's entire record is proper. Claimant's attendance has been very poor, especially in the months preceding the absences involved here. Prior suspensions for excessive absenteeism are part of that record. Accordingly termination was reasonable.

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 7th day of December 1983.