

Rule 18 of the Controlling Agreement relied upon by the Claimant states:

"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 for any good cause shall notify his foreman as early as possible, by telephone, messenger or by United States mail.

In terms of the July 21, the Claimant reported sick when he actually used the day for personal business. The Claimant had at least one month's prior notice of his July 28 Court appearance; he testified the request was marked "off with the recording." Even assuming arguendo, that the required appearances in Court on July 30 and 31 fell within the coverage of Rule 19, serious charges still exist as to the Claimant's compliance with the Rule on July 21 and July 28. Those two charges are supported in the record and he is found guilty of at least these two (2) incidents.

While a past record cannot be used to establish guilt of a pending charge, such record can be used to determine the appropriate penalty. That record indicates that he has been disciplined on three (3) occasions: dismissal-restoration, reprimand (loss of time), and a 3-day suspension (loss of time).

Based upon the entire record there is no proper basis for this Board to interfere with the action of the Carrier in imposing a three (3) day suspension.

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 29th day of February, 1984

The Second Division consisted of the regular members and in addition Referee Thomas F. Carey when award was rendered.

(International Association of Machinists
(and Aerospace Workers
Parties to Dispute (
(The Washington Terminal Company

Dispute: Claim of Employes:

1. That, under the current Agreement, the Washington Terminal Company unjustly suspended Machinists T. W. McElveen from the service of the company for a period of three (3) days, September 8, 9 and 10, 1980.

2. That, accordingly, the Washington Terminal Company be ordered to compensate Machinist T. W. McElveen with pay for all time lost for September 8, 9, and 10, 1980 and his record cleared of the charges of excessive loss of time from duty for July 21, 28, 30 and 31, 1980.

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, a Machinist at the Carrier's Ivy City Roundhouse, has been employed for seven (7) years. The Claimant, as a result of a hearing held on August 14, 1980 was found guilty of "Excessive Loss of Time from Duty during the month of July 1980 as follows: July 21, 28, 30 and 31." As a result he was assessed a three (3) day suspension which was served on September 8, 9 and 10, 1980.

The Organization asserts that the record shows the Claimant submitted documented evidence upon request during the investigation claiming he had permission to be absent and substantiating the reasons for his absences on July 21, 28, 30 and 31. There is some dispute as to whether or not such permission had been received. The record indicates that the Claimant reported "sick" on July 21 although he testified that on "The 21st I had a meeting with my lawyer." On July 28, the Claimant was in Court to pay a fine, acknowledging that he had a month's notice of his appearance. The Claimant contends he came to work on July 20 but left to clear up an arrest warrant and had to appear in Court on July 31. His claim of having received his supervisor's permission is denied by the Supervisors.