

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

Parties to Dispute: ( International Brotherhood of Electrical Workers  
( System Council No. 7  
( Consolidated Rail Corporation (Conrail)

Dispute: Claim of Emloyes:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly suspended Electrician F. N. Birk1 ten (10) days - previous discipline record considered, effective May 6, 1981.

2. That accordingly, the Consolidated Rail Corporation (Conrail) be ordered to restore Electrician F. N. Birk1 to service with seniority unimpaired and with all pay due him from the first day he was held out of service until the day he is returned to service, at the applicable Electricians' rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due him, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and to expunge 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 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.

The Claimant was disciplined for ten (10) days deferred suspension for excessive absenteeism on April 1, 2 and 15, 1981; for being tardy .1 hour on April 10, 1981 and in light of his prior discipline record.

An employee may be excessively absent even though he complies with Rule 8-1-2 by notifying the Carrier as soon as possible when he is "unable to report for work or is detained from work for any cause." Rule 8-1-2 deals solely with the obligation of an absent or tardy employee to notify the Carrier as soon as possible. On the other hand, absenteeism, even for good cause may be excessive and thus subject to discipline. See, for example, Awards No. 5049 and No. 7348.

It is fairly well established that "there is no precise formula expressed in hours, days or percentage that determines excessive absenteeism. Each case must be examined on its merits." Public Law Board No. 1790, Award No. 117. In carefully examining the facts of the instant case, the Board concludes that the Claimant was not excessively absent. He was absent April 1, 2 and 15, and tardy for .1 hour on April 10, 1981. The Carrier does not dispute that the absenteeism by the Claimant in April, 1981 is for good cause.

Before April, 1981, the Claimant was last disciplined for excessive absenteeism in June, 1979. Thus, allowing time off for discipline, a period of sixteen (16) months has elapsed between June 1979 and April 1981 without any discipline imposed against the Claimant for unauthorized or excessive absenteeism. Accordingly, just isolating the absences of the Claimant on April 1, 2 and 15, and his tardiness of .1 hour on April 10, 1981 does not warrant the conclusion that the Claimant was excessively absent. By contrast, the Carrier refers to several Awards, where the Claimants followed a consistent and uninterrupted pattern of absenteeism over a particular period of time. Although discipline was imposed against the Claimants in these cases, they continued their consistent pattern of excessive absenteeism. See, for example, Public Law Board No. 1790, Award No. 117 and Third Division Award No. 22622. In the instant case, no such consistent and uninterrupted pattern of excessive absenteeism is present. The absences by the Claimant on April 1, 2 and 15, and his tardiness of .1 hour on April 10, cannot reasonably be characterized as excessive absenteeism. Moreover, such absences cannot be accurately described as a "pattern" of absenteeism.


It should be underscored that the Claimant's past discipline record should not have been considered in determining the degree of discipline, because the Carrier has not established that the Claimant committed a violation, namely that he has been excessively absent. Since the Claimant's suspension of ten (10) days was deferred, he lost no wages, or benefits as a result thereof. Claimant's record shall be cleared.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984.