

The Second Division consisted of the regular members and in addition Referee Francis M. Mulligan when award was rendered.

Parties to Dispute: (International Brotherhood of Electrical Workers
(National Railroad Passenger Corporation (Amtrak)

Dispute: Claim of Employees:

1. That under the current Agreement, the National Railroad Passenger Corporation (Amtrak) has unjustly assessed discipline of thirty (30) days suspension, deferred six (6) months, against Electrician R. A. Reeves on December 16, 1980 at Beech Grove, Indiana.
2. That accordingly the Carrier should be ordered to vacate the discipline and to expunge the aforementioned employee's record of any unfavorable marks resulting therefrom.

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 charge in this case is excessive absenteeism. Claimant is charged with violating Rule 28(a) of the Controlling Agreement, Rule (L) of the NRPC Rules of Conduct and Rule 11(b) of the Controlling Agreement involving working a forty (40) hour work week. Claimant R. A. Reeves works at the Carrier's Beech Grove, Indiana facilities. He has been in the service of the Carrier at least since 1976. The critical rule is Rule 28(a) which states that employes shall not absent themselves from their positions for any cause without first obtaining permission from their supervisor. In case of sickness, etc. where the supervisor cannot be located, they shall notify their supervisors or another person in authority as soon as possible. The Procedures Manual of the Carrier indicates that excessive absenteeism is three (3) or more unexecuted periods in any thirty (30) day period. Testimony was presented that the Carrier had established a procedure which an employe is to follow to obtain permission to be absent from the assigned position. The procedure was to call the Guard Shack and notify the person on duty. The Carrier claims that the Claimant did not prove that he called the Guard Shack. Testimony presented by the Carrier was that of the payroll clerk indicating that

the Claimant had been absent three (3) days and late for work one-tenth (1/10th) of an hour on the fourth (4th) day during the thirty (30) day period. No other relevant testimony was offered. The Claimant testified that on each of three (3) days in which he was absent for eight (8) hours, he called the Guard Shack and told the guard that he was ill and unable to work that day. The Claimant then presented the testimony of his own foreman who stated that sometimes the Guard Shack calls the foreman and sometimes the Guard Shack does not call the foreman. The foreman also testified that there have been times when people have called the Guard Shack, and he knows for a fact that they called, but the Guard Shack has never called the foreman. The foreman testified that it is not uncommon for a man to call to the Guard Shack and for the foreman not to receive the information. Furthermore, the foreman testified that Mr. Reeves is a truthful man and that he would believe Mr. Reeves if Mr. Reeves said that he called the Guard Shack. The burden of proof in this matter is upon the Carrier. The hearings as conducted are under the control of the Carrier. Under the circumstances, evidence should have been presented on the part of the Carrier from the Guard Shack either in the form of a logbook or in the form of testimony from the employe on duty when the calls were alleged to have been made. None of this was presented at the trial. The real issue is not whether or not calling in because one did not feel well is an excused or an unexcused absence. The assumption is that the Guard Shack would notify the foreman and the foreman would then call the employe and probe the reasons for the absence if that was desired. In this case, the foreman never found out that the employe had called in and therefore the question of whether or not the particular reason that the employe called in was an excusable one or not was not reached. There was no proof presented that the absence was unexcused. Under the circumstances, the discipline should be vacated and the claim sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of August 1984.