

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

Parties to Dispute: ( Robert M. Perrin  
( Consolidated Rail Corporation

Dispute: Claim of Employees:

Carrier's System Docket CR-1686 -

- "1. Unauthorized Absence: September 24, 25, 26, 29, 30, 1980  
and October 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, & 16, 1980.
2. Failure to return to work after receiving MD 40 qualifying you  
to return to duty effective September 24, 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 employee or employees involved in this dispute are respectively carrier and employees 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 were given due notice of hearing thereon.

The significant events leading to this dispute occurred during late Fall 1980. At that time, the Claimant had contended that he was unable to report for work because of a physical condition. However, the Carrier's Doctor qualified him to return to duty effective September 24, 1980. When he failed to report on that date, the Carrier charged him with unauthorized absences for a series of dates in September and October 1980 and failure to return to work. Following a trial, he was dismissed from the service.

The Board has thoroughly reviewed the complex issues and circumstances evident in the record before it and, while we are not unaware of the Organization's skillful questioning at the hearing, to more clearly bring forth its contention that the Claimant was innocent of the charge, we find that the Carrier has met its burden of proof. Unquestionably, there is conflicting testimony and other elements in the record that do not lead easily to a finding of guilt. However, if there is sufficient evidence to support the finding of guilt, and we find such evidence herein, it is not the role of the Board to substitute its judgment for that of the Carrier.

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Award No. 10196  
Docket No. 10117-I  
2-CR-I-SM-'85

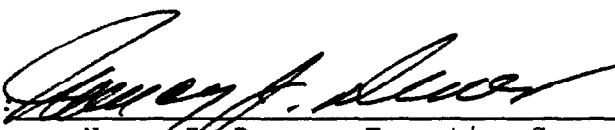
Accordingly, absent a finding that the penalty assessed was arbitrary and/or capricious, the claim is denied.

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 9th day of January 1985.