

The Second Division consisted of the regular members and in addition Referee T. Page Sharp when award was rendered.

Parties to Dispute: ( International Association of Machinists and  
( Aerospace Workers  
( National Railroad Passenger Corporation

Dispute: Claim of Employees:

That the National Railroad Passenger Corporation (Amtrak) be ordered to clear the record of Machinist G. Reed as a result of a five (5) day deferred suspension (held in abeyance).

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 was alleged to have been absent from his assignment on August 18, 24, and 25, 1982. The investigation was attended only by the Claimant, the Investigating Officer and the representative of the Claimant.

During the course of the investigation the Claimant presented a note from his doctor which was not entirely clear, but which seemed to say that Claimant was off work the 24th and 25th of August, 1982 and was cleared for work on the 26th of August. Claimant had returned to work on the 26th. Claimant testified that he had had migraine headaches and was under the care of the doctor. The note from the doctor was dated September 15, 1982. Claimant testified that he had not thought a note was necessary, but for precaution he had acquired the note on September 15, thus that was when it was dated. Even though Claimant testified that he was ill on the 18th and had not gone to the doctor, this obviously was not an acceptable reason to the Carrier.

Carrier policy defines excessive absenteeism as:

Excessive absenteeism is considered to be three (3) or more days off or three (3) late arrivals, or a combination of them both within a month's time.

Because he had been absent on the three aforementioned dates, Claimant was held to have been in violation of the stated policy and was assessed a five day suspension.

Much of the investigation concerned interrogation by the Investigation Officer concerning the date of the doctor's excuse. It is obvious that the Investigating Officer thought this was an "after the fact" excuse generated for the purpose of the investigation. However, the note and the testimony of the Claimant are the only evidence in the record. Unless evidence is so patently false as to allow the Board to take judicial notice of its falseness, it stands as un rebutted evidence. Claimant's testimony was not evidence of a nature that would allow the Board to disregard it. Thus, we find that the Claimant was absent on the two days because of illness. The Investigating Officer did not credit the Claimant's statement that he was absent on the 18th because of illness. Credibility of verbal testimony is a matter for the Investigating Officer and, absent any evidence that would contradict his findings, the Board must leave undisturbed his findings. We will uphold the finding that the Claimant had not proved to the Investigating Officer that he was ill on the 18th.

We find that the portion of the charges relating to excessive absenteeism were not proved. We also find that that portion of Rule L which reads "Employees shall not...be absent from duty without proper authority" was proven by the absence of the 18th.

There is no evidence in the record of any past disciplinary history of the Claimant. Given the mild nature of the offense, one day of unexcused absence, the Board finds that a letter of reprimand would have been sufficient discipline. We order that the discipline be reduced to a reprimand and that all record of suspension be stricken from the Claimant's disciplinary record and that he be made whole for any monetary losses, if any, sustained by the suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1985.