

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10758
Docket No. 10850
2-NRPC-MA-'86

The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when award was rendered.

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers, AFL-CIO
(
(National Railroad Passenger Corporation (AMTRAK)

Dispute: Claim of Employees:

That the National Railroad Passenger Corporation (AMTRAK) be ordered to clear and otherwise expunge the record of Machinist G. N. Hummell of a thirty (30) day deferred suspension (held in abeyance) in violation of Rule No. 28, but not limited thereto, of the prevailing agreement dated September 1, 1977 as subsequently amended.

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 were given due notice of hearing thereon.

The Claimant, G. N. Hummell, a Machinist with the Carrier, was given a 30 day deferred suspension as a result of an investigation held on March 8, 1984. The Claimant was charged with violations of Rules F, I, K, and L, which involve absenteeism and insubordination for failure to wear a respirator on February 22, 1984.

The Organization argued each absence during the period was accounted for. The Claimant brought doctors' notes supporting his absences, and each absence was reported off in the proper manner. In fact, on some days the Claimant was told to go home by the Carrier's own nurse. With respect to the alleged failure to wear a respirator, the transcript shows the Claimant does comply with the respirator rule, even though he is the only one singled out for such treatment. When he was told to wear it, he does. The Organization alleged that the instructions given to the Claimant regarding the respirator were unclear, and the kinds of solvents that the Claimant was supposed to stay away from were not being used in that area.

The Carrier argued it had conducted a fair and impartial hearing, the Claimant was off approximately 16 days during the one-month period in question, and not all of the absences were properly documented. On February

15, the Claimant was off for personal business. With respect to the respirator, the Claimant was experiencing medical problems. It was determined that when the Claimant was working in the Bearing Room, he should wear a respirator. The Carrier furnished a respirator to the Claimant, and he was told to wear it. This was for his own benefit. It is clear from the record that the Claimant did not wear his respirator on February 22, 1984 and was observed by two supervisors on that occasion.

Upon complete review of the evidence presented, the Board finds that the Carrier had conducted a fair and impartial hearing as required by the Rule. It is clear from the record the Claimant was absent on the days in question. The Claimant, with the exception of February 15, has a doctor's statement which advised the Carrier that the Claimant was under the care of this physician for the entire month of February. However, the note does not say whether or not the Claimant should have been absent from his employment due to his upset stomach condition. In addition, the medical evidence was not forthcoming until the end of this episode. In a number of Awards before this and other Divisions, referees have held that even excused absenteeism might be viewed as excessive under certain circumstances. The Board feels that this is one of those cases. The Claimant has had various suspensions and letters of warning concerning absenteeism in the past. His recent absentee record was not good. This case differs markedly from Second Division Award 10759 due to the volume of absences and the past record of the Claimant. The Carrier has the right to expect reasonable attendance from its employees, as failure to do so causes substantial disruption to the schedule of the Carrier and inconvenience for other employees.

With respect to the failure to wear the respirator, the Board finds the record is clear. The Claimant was given a direct order, was issued the appropriate equipment, and yet failed to follow this directive on the date in question.

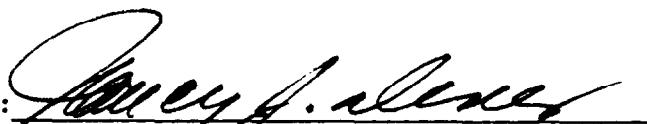
With respect to the appropriateness of the penalty, the Board, given all of the circumstances and the past record of the Claimant, will not substitute its judgment for the Carrier's in this matter. Therefore, the claim will be denied.

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 26th day of February 1986.