

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10759
Docket No. 10851
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
(National Railroad Passenger Corporation

Dispute: Claim of Employees:

That the National Railroad Passenger Corporation be ordered to clear and otherwise expunge the record of Machinist S. Larson of a five (5) day deferred suspension, 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 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 waived right of appearance at hearing thereon.

The Claimant, S. Larson, a Machinist with the Carrier and in service for ten years, was given a 5-day deferred suspension for absenteeism as a result of an investigation held on March 29, 1984. The Claimant was charged with violations of Rules K, L, and the attendance policy of the Carrier in connection with absences which occurred on February 6, 7, 8, 13, and 15, 1984.

The Organization argued that the Carrier did not prove the Claimant's guilt in this matter. It notes the Claimant was on vacation and, while on vacation, had developed a rash. The Claimant marked off on each day February 6, 7, and 8, and on February 10 was under a doctor's care. There was some concern that the disease could be communicable, and the Claimant brought a doctor's note. With respect to the absences which occurred on February 13 and February 15, these were beyond the Claimant's control -- one involved car trouble and the other involved having to take a child to the dentist. The Organization also noted that the Claimant did show remorse for his absenteeism.

The Carrier argued the absences, particularly those that occurred on the 13th and 15th, were unacceptable. The Claimant was absent 5 of the 9 calendar days during the period, he had been previously warned for attendance in July of 1983, and the Claimant should be familiar with the Rule. The Carrier also notes that it did take the Claimant's service and home situation into account and notes the Claimant was given a deferred suspension under the circumstances.

Upon complete review of the evidence, the Board finds the Carrier afforded the Claimant a fair and impartial Hearing as provided for in the Rule. The Claimant's absences on the 13th and 15th were within the control of the Claimant. The Board notes that the Claimant had been counseled regarding absenteeism only a few months previous to these incidents and should have been aware of the concern the Carrier had for his absenteeism. With respect to the absences which occurred on February 6, 7, and 8, the Claimant did furnish a doctor's certificate stating that he had been under doctor's care for the 3 days in question. Absences for legitimate reasons, if they are excessive, are typically counted towards an employee's overall attendance record; and while the Claimant was certainly off an extensive time during the period in question, his overall absentee record does not seem to be particularly excessive. The Carrier's own attendance policy calls for 3 instances of absenteeism within a month's time prior to discipline. As noted earlier, the absences on February 13 and 15 would not be excused, however, the previous 3 absences were accounted for. The Claimant did follow the mark-off procedure of the Carrier, and in the opinion of the Board discipline was not warranted in this matter. Therefore, the claim will be sustained. The Claimant is specifically advised by the Board to take great care to protect his assignment in the future.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.