

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10902
Docket No. 10910
2-IHB-MA-'86

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

(International Association of Machinists and
(Aerospace Workers

Parties to Dispute: (

(Indiana Harbor Belt Railroad Company

Dispute: Claim of Employees:

1. That the Indiana Harbor Belt Railroad Co. be ordered to reimburse Machinist R. Regula for five days pay, at the prevailing Machinist rate of pay, for the five days actual suspension served and have it removed from the service record.

2. That the Indiana Harbor Belt Railroad Co. be ordered to remove from Machinist R. Regula's Service record the thirty day record suspension, also assessed him on the alleged charge.

3. The Agreement effective January 1, 1947 is controlling and the provisions of Rule 36 are prevailing.

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 Claimant was notified in letter dated May 25, 1983 to attend Investigation on June 7, 1983 to answer charge of excessive absenteeism as follows:

"Off account of injury: 11/30/80 to 2/11/81.
Off account of illness: 2/27/81 to 5/31/81.
Days absent: June 3, 1981.
August 14 and 30, 1981.
October 15, 1981.
November 28, 1981.
January 17, 27, 28, 29, 30, and 31, 1982.
February 3, 1982.
April 6, 1982.
June 12, 1982.
December 18, 1982.
Off account of illness: 1/15/83 to 5/9/83."

Included in the notice was a statement that his past record would be reviewed.

On May 26 the Investigation was postponed to June 14. On June 2 it was postponed until such time the Claimant returned to work and his leave of absence was over.

On August 2 the Claimant was notified that the Investigation scheduled for June 14, 1983 and postponed until such time when he returned to work and his leave of absence was over had been rescheduled for August 10.

The letter of August 2 added and included the dates of "5/21/83 to 7/30/83" off account of illness. Those dates were not in the initial notice.

On review of the record we observe that during the period "11/20/80 to 2/11/81" when the Claimant was shown as off account injury, he testified that the injury occurred on 10/23/80 when he slipped while lifting an item from a hand truck, causing a hernia for which he was operated on during that period.

The Transcript of the Investigation also discloses that he was subjected to an informal Investigation in regard to that injury. Reference to the informal Investigation was placed on his record bearing a date of "11/6/80".

In addition, that record shows that on "3/10/81" he was assessed with a five (5) day actual and a ten (10) day record suspension following a formal Investigation held on February 20, 1981 for the personal injury of October 23, 1980.

Each of the record entries show violation of Safety Rule 4229, apparently for the same injury on the same date, October 23, 1980. It appears that the absence during the period set forth in the initial Investigation notice; i.e., "off account injury 11/20/80 to 2/11/81" was legitimate. The Investigating Officer did not prove that it was not.

Moreover, citing the Claimant with days absent more than two years prior to the date of the initial notice of Investigation, even with - or without - a time limit for doing so is going far afield. There is a time for all things, and absences should be handled within season. Citing them now without any showing that those absences had been timely handled with the employee and recorded following such handling appears to be highly irregular in the absence of an explanation by the Carrier.

While it is well established that the Carrier may condone excused absences even for illness and other legitimate reasons, the number is not limitless and the Carrier need not be handicapped by any employee who cannot be counted on to be present for scheduled work. This Board holds, nonetheless that inclusion of "5/21/83 to 7/30/83" in the notice post haste and the other seeming irregularities referred to above makes these proceedings suspect.

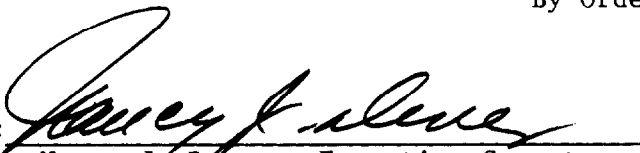
Even though the Claimant made a blanket admission of absences on all of the dates named, we do not find that the Investigation was fair and impartial. Instead, we hold that the Carrier Officers in charge of issuing the notice and conducting the Investigation abused their discretion. The Claim will be 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 25th day of June 1986.