

The Second Division consisted of the regular members and in addition Referee Ronald J. Nelson when award was rendered.

(International Association of Machinists and
(Aerospace Workers
Parties to Dispute: (
(Consolidated Rail Corporation

Dispute: Claim of Employees:

1. That the Consolidated Rail Corporation be ordered to remove the five (5) day suspension assessed Machinist C. Cinatti, from his service record in accordance with the provisions of Rule 7-A-1 (e) of the prevailing Agreement.

2. The Agreement of May 1, 1979, is controlling.

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.

On October 19, 1982, a properly noticed Hearing was conducted, in accordance with the Controlling Agreement in existence between the Parties, to develop the facts and to determine Claimant's responsibility, if any, in connection with Claimant's failure to report for duty on September 17, 18, 19, and 20, 1983, and his working only 7 hours on September 7 and 12, 1983.

The record reflects that the Claimant produced a physician's statement attesting to the fact that the Claimant was unable to work, because of an off the job injury, for the period September 17, 18, 19, and 20, 1983. Further, the Claimant testified that he overslept on September 7th and car trouble caused him to be tardy on September 12th.

Following the Investigation, the Carrier assessed a 5 day suspension which was deferred for six months. The Organization objected to the results of the Hearing and perfected a timely appeal.

The Organization, in effect, contends that the physician's statement and the Claimant's admission on the record that he overslept on one occasion, and experienced mechanical trouble with his automobile negates the authority of the Carrier, within the provisions of the Controlling Agreement, to assess any discipline as a result of the Claimant's absenteeism.

The record does not reflect that the Carrier disputes the fact that Claimant was absent because of an off the job injury, nor the validity of the physician's statement.

The Board can sympathize with an employee who is disciplined as a result of, in part, absences due to an accidental off the job injury for which there is proper documentation of medical care. However, the weight of arbitral authority holds that absenteeism of an employee, even if caused by genuine incapacity, is subject to discipline by the Carrier because the Carrier is entitled to have its work needs accommodated by the work force (c.f. P.L. Board No. 2945 - Award No. 24, Case No. 31). Implicit in the employee-employer relationship is the understanding that the employee must be reasonably prompt and regular in his attendance at work (c.f. PL Board No. 2263, Award No. 37, Case No. 44).

The Division has held, in Award No. 10758, that "... even excused absenteeism might be viewed as excessive under certain circumstances." Also, "...the Carrier has the right to expect reasonable attendance from its employees..." Clearly, this case fits into that category of cases wherein excessive absenteeism for which the Carrier may take disciplinary action in conformance with the Controlling Agreement.

With respect to the decision of the Carrier, the Board finds that there is substantial evidence in the record to support the Carrier's decision to assess discipline against the Claimant, and that the Carrier's decision was not unreasonable. With regard to the appropriateness of the discipline assessed, the Board, given all of the facts in the record, and the Claimant's past record, 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 7th day of January 1987.