

The Second Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

(International Brotherhood of Electrical Workers
Parties to Dispute: (
(Consolidated Rail Corporation

Dispute: Claim of Employes:

1. That under the current Agreement the Consolidated Rail Corporation (Conrail) unjustly suspended Altoona, Pa. Electrician (Crane Director) D. D. Croft from service three (3) days effective November 20, 1984.

2. That accordingly the Carrier be ordered to restore Electrician (Crane Director) D. D. Croft to service with seniority unimpaired and with all pay due him from the first day he was held of (sic) service until the day he is returned to service, at the applicable Electrician's (Crane Director) rate of pay for each day he has been improperly held from service; and with all benefits due him under the group hospital and life insurance policies for the aforementioned period; and all railroad retirement benefits due, including unemployment and sickness benefits for the aforementioned period; and all vacation and holiday benefits due him under the current vacation and holiday agreements for the aforementioned period; and all other benefits that would normally have accrued to him had he been working in the aforementioned period in order to make him whole; and expunge his record.

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, an Electrician employed by the Carrier at Altoona, Pa., with about 10 1/2 years of service, reported to the Carrier on October 8, 1984, that he could not report to work on that date because of illness. On October 22, 1984, he reported to the Carrier that he and his family had the flu and that he could not come to work on that account. On October 24, 1984, Claimant was notified to attend a Trial scheduled for 9:00 A.M., November 7, 1984, on the charge:

"Absent from duty on 10-8-84 and 10-22-84, which, on the basis of your previous record and after being cautioned, constituted excessive absenteeism."

Following the Trial, conducted on the date scheduled, Claimant was assessed discipline of three days suspension. We have reviewed the Transcript of the Trial and find that none of Claimant's substantive procedural rights was violated. The fact that Claimant's prior discipline record was introduced in the Trial did not deprive the Claimant of a fair and impartial Trial. An employee's prior disciplinary record may properly be considered in arriving at the discipline to be imposed for a proven offense, but may not properly be used to prove the charge or charges. We note, however, that Claimant's discipline record, as introduced in the Investigation, shows no prior discipline for absenteeism. It shows one 10-day suspension in May, 1980, for "Poor workmanship on cleaning of electrical cabinet on Unit 1216 on 4-9-80." The record does contain a letter of caution to Claimant dated August 9, 1984.

In the Trial Claimant stated that he was ill on October 8, 1984, and that he and his family were ill on October 22, 1984, and that he notified his Supervisor of his illnesses. The General Foreman testified that Claimant was under his direct supervision on October 8, 1984, and October 22, 1984; that Claimant called in and marked himself off sick on the dates involved and:

"I accepted the absenteeism as sick, but it still constituted absenteeism, he wasn't here for work."

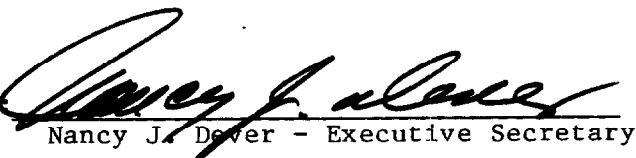
Sickness is generally accepted as a valid reason or good cause for being absent from work. If the Carrier desired proof of Claimant's illness, it could have demanded it, but, the Carrier having accepted the absences on the two dates as sickness, we consider the Carrier not on good grounds in using the two dates as a basis for the charge of October 24, 1984. We find no proper basis for imposing discipline against the Claimant. It certainly is not unusual for employees to lay off from work because of sickness. The Claim will be sustained, Claimant to be allowed pay for the three days that he was suspended from service, with pay computed in accordance with the provisions of the applicable Agreement. If, as the Carrier states in its Submission to the Board, the discipline was deferred and Claimant did not actually lose any time, then no compensation would be due Claimant; however, his record is to be expunged of any discipline administered.

A W A R D

Claim sustained in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of February 1987.