

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

Parties to Dispute: (International Association of Machinists and
(Aerospace Workers
(Norfolk & Western Railway Company

Dispute: Claim of Employees:

1. The Norfolk and Western Railway Company violated Section A-1 of the schedule Agreement as amended May 1, 1983, but not limited thereto, when it arbitrarily and capriciously disciplined Machinist J. W. Ails by assessing him a fifteen (15) day deferred suspension as a result of investigation held January 23, 1985.

2. Accordingly, Machinist J. W. Ails record should be cleared of any reference to the discipline.

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.

At the time of the occurrence giving rise to the dispute herein, Claimant had been in Carrier's service about nineteen years and was assigned as a Machinist in the Diesel Shop of Carrier's Roanoke Locomotive Shops, Roanoke, Virginia. On January 14, 1985, Claimant was instructed to attend formal investigation scheduled for January 23, 1985:

"...to determine your responsibility for excessive absenteeism in that you were absent all day or a portion of nineteen (19) days during the period July 13, 1984 through January 7, 1985."

The Investigation was conducted on the date scheduled, and a copy of the Transcript has been made a part of the record. We have reviewed the Transcript and find that the Investigation was conducted in a fair manner.

The record shows that during the period involved, July 13, 1984, through January 7, 1985, Claimant was scheduled to work 960 hours, but that he missed 140.3 hours, or 14.6%, much higher than the absentee rate for other employees at the same facility. Following the Investigation Claimant was assessed discipline of fifteen days deferred suspension.

During the Investigation, Claimant contended that his absences were due to his physical condition. The record shows, however, that the Claimant had previously been disciplined because of being absent without permission, and about six months prior to the charge in the instant case, Claimant had been cautioned about his absenteeism, and advised to see if he could get his condition improved so that it would not be necessary for him to absent himself from work to the extent that he had been. There was also introduced in the Investigation a statement from Claimant's doctor, dated January 19, 1985, or after the letter of charge had been issued. The doctor's statement indicated that Claimant was seen by the doctor on January 19, 1985, had previously been seen on April 28 and May 8, 1984, "at which time he was treated for pneumonitis, sinusitis and systems of chronic obstructive pulmonary disease. John has neglected his health lately but will now be under medical supervision." The record is clear that Claimant disregarded the cautions previously given him to attempt to improve his condition to the point where he could work more regularly.

Award No. 6 of Public Law Board No. 3727, involving the same parties as involved herein, upheld the disciplining of an employee whose work hours indicated a 12% absenteeism rate compared with an average of 4.6% for other employees of the same craft and at the same facility. In denying the Claim appealing discipline of ten days actual suspension, the Board held in part:

"While Claimant presented a very sympathetic case, it is not the function of this Board to substitute its judgment for that of the Carrier, absent evidence that either the conclusion preceeding discipline is without a substantial evidentiary base or that the discipline imposed is arbitrary or capricious. While it is understandable that Claimant will not neglect his parental responsibility neither can he neglect his work responsibility."

In Award No. 12 of Public Law Board No. 3530, involving the same Carrier as here involved and another Organization, it was held in part:

".....It is well established that an employer may terminate an employee for repeated lateness and absence, even if the employee sometimes has valid

excuses. The reason for this rule is that an employer is not obligated to keep an employee in service who cannot or will not reliably report for work as assigned. The rule applies regardless of the reasons the employee may have for being absent."

In Award No. 38 of the same Public Law Board No. 3530 it was held in part:

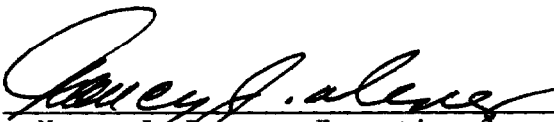
"In order to operate, a Company needs employees who are reliable and who may be counted upon to report for work each morning. A company is not obligated to retain an employee who is frequently absent and not dependable. Although he often has legitimate reasons for being absent, the claimant was not reliable."

Based upon the entire record, there is no proper basis for the Board to interfere with the discipline imposed. The discipline was not arbitrary, capricious or in bad faith.

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 20th day of May 1987.