

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

Parties to Dispute: (Joseph Bizub  
(  
(National Railroad Passenger Corporation  
( (Amtrak)

Dispute: Claim of Employees:

Claiming reinstatement with seniority unimpaired.

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 were given due notice of hearing thereon.

Claimant entered the Carrier's service on April 3, 1980 and at the relevant time was employed as a Carman/Journeyman at the Carrier's 14th Street Mechanical Facility in Chicago, Illinois. By letter dated February 21, 1985, Claimant was charged with violation of Rules K and L due to absences and being tardy and Rules A and Y for failing to follow instructions set forth in a reinstatement letter and meeting concerning a prior dismissal. After Hearing on February 27, 1985, and by letter dated March 11, 1985, Claimant was dismissed from service.

Effective March 23, 1984, the Carrier considered Claimant to have resigned under Rule 27 due to Claimant's being absent from service without authority and without giving notification of such absence for the period March 10 through March 22, 1984. The Joint Council of Carmen protested the Carrier's action and by letter dated October 17, 1984, which was signed by Claimant on October 29, 1984, a settlement was achieved on Claimant's behalf whereby Claimant was reinstated without loss of seniority and vacation rights but

without pay for time lost. The settlement was conditioned upon Claimant having weekly contact with a specified EAP Counselor and adherence to the after-care plan prescribed by the EAP Counselor which included attendance at weekly Alcoholics Anonymous meetings. The settlement further required Claimant to pass a return to duty physical examination and to meet with the Facility Manager prior to returning to service. Finally, the settlement provided "that a recurrence of the incident which gave rise to this dispute will subject him to disciplinary action in the future." Claimant's reinstatement to service was effective October 30, 1984. On October 31, 1984, the meeting with the Facility Manager as required in the settlement resulted in Claimant's being reminded that he must work a 40 hour week and arrive at work on time and that failure to adhere to those provisions would result in severe disciplinary action.

Notwithstanding the provisions of the settlement, on January 25, February 5, 11, and 16, 1985, Claimant was absent from work. On January 26 and 29, 1985, Claimant was absent without authority. On February 1, 8, 15 and 17, 1985, Claimant was late. Additionally, Claimant failed to attend his weekly Alcoholics Anonymous meetings and further failed to maintain contact with the EAP Counselor. The instant charges followed.

We are satisfied evidence in this record supports the Carrier's determination that disciplinary action was appropriate. We have carefully examined the record from the Hearing wherein Claimant's position was advocated in detail by his Organization, and we have considered the relevant facts that were brought forth through examination and cross-examination of witnesses. We have further considered Claimant's oral presentation before this Board. Nevertheless, the evidence clearly shows that Claimant's actions were in clear violation of the settlement agreement which imposed strict and specific conditions that Claimant did not meet. Claimant offered written medical excuses for his absences. However, putting aside the issue of whether the supporting documentation shows that the dates on which Claimant was seen by a doctor correspond to the dates making up the charges, as we have held before, merely because an employee can medically verify an absence does not excuse that employee from disciplinary action. Excessive absenteeism is a serious offense subjecting the offending employee to discipline including dismissal. Alleged personal problems do not excuse an employee from discipline rendered as a result of excessive absenteeism. See Second Division Awards 10129, 10128, 9465, 9464, 8895. Moreover, Claimant acknowledged during the Hearing that prior to his last reinstatement, he agreed that he would work a 40 hour week and not be late. The record clearly shows that Claimant was unable to meet those commitments. Additionally, Claimant acknowledged that he did not live up to that part of the reinstatement conditions calling for his contact with the EAP counselor and attendance at Alcoholics Anonymous meetings.

Under the circumstances, we cannot say that the imposition of dismissal was either arbitrary, capricious or an abuse of discretion. Claimant was dismissed several months earlier for similar conduct and he has demonstrated an inability to improve or to adhere to his commitments. We find no basis to disturb the Carrier's action.

In light of the above, it is unnecessary to address the other arguments raised by the Carrier.

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 4th day of November 1987.