

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

(International Brotherhood of Firemen & Oilers  
Parties to Dispute: (  
(CSX, Inc., (Seaboard System Railroad)

Dispute: Claim of Employees:

1. That under the controlling agreement, Laborer R. T. Scott was unjustly suspended from service of Seaboard System Railroad on April 28, 1986, after a formal investigation which was held on February 13, 1986, and was completed on March 27, 1986, by Mr. H. D. Bledsoe, Asst. Master Mechanic and Conducting Officer.

2. That accordingly, Laborer R. T. Scott be compensated for the days of April 28, 1986 through May 2, 1986, (5 days) both dates inclusive, and the payment of 10% interest rate be added thereto.

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 is a Laborer in the Carrier's service since April 10, 1970, and is employed at Hialeah Shops, Florida. As a result of charges dated January 14, 1986, Hearing eventually completed on March 27, 1986, and letter dated April 23, 1986, Claimant was suspended for five days for repeated and chronic absenteeism.

During calendar year 1985, Claimant was absent (inclusive of full days, tardiness and early quits) on forty-one occasions. According to the Carrier, and taking into account vacation, rest days and holidays, Claimant's absenteeism rate amounted to 17.5%. Claimant's past disciplinary record shows that on four previous occasions he was warned in writing concerning his absenteeism record.

Initially, the Organization raises several procedural arguments which we find to be without merit. First, the Organization claims that error was committed in that the January 14, 1986, letter of charges set the Hearing in this matter for January 31, 1986, and therefore the Hearing was scheduled at a time beyond the ten day period specified in Section B.1.a. of the applicable Memorandum of Agreement. However, we note that the record demonstrates that the Organization requested several postponements due to Claimant's physical inability to attend. Additionally, on the date finally agreed upon for Hearing, Claimant did not appear apparently due to medical reasons. Another postponement was granted by the Carrier. In such a context, we are unable to consider the Organization's argument that the Hearing was not held in timely fashion. Further, even assuming that the Hearing was scheduled for a date within the ten day period, the record does not demonstrate that Claimant would have been able to attend. Hence, no prejudice has been shown.

Second, the Organization contends that the charge is vague. However, our reading of the charge coupled with the fact that at the Hearing Claimant was apprised of the number of dates missed per month (which facts were not contested as being inaccurate) satisfies us that Claimant was on notice of the specific allegations against him and was thereby permitted the opportunity to prepare his defense to those allegations.

Third, the Organization contends that the Carrier improperly cited dates of alleged infraction beyond the ten day limit found in Section B of the Memorandum of Agreement. However, the charge in this case (chronic and repeated absenteeism) is, by its nature, a violation requiring the examination of a substantial period of time and we find nothing in the record to demonstrate that the Carrier unduly delayed bringing the charges.


With respect to the merits, Carrier's Rule 7 provides that ". . . repeated and chronic absenteeism will subject an employee to investigation and possible discipline." Clearly, the amount of absences demonstrated by Claimant during 1985 shows that substantial evidence exists in this record to support the Carrier's conclusion that Claimant violated the Rule. The fact that Claimant may have notified the Carrier of the absences does not change the result. Claimant has been charged with repeated and chronic absenteeism. Claimant has not been charged with being absent without permission. Further, we find nothing in the record to support the Organization's argument that the Carrier discriminated against Claimant for being unavoidably kept from work within the meaning of Rule 19. In light of the previous warnings given to Claimant for the same misconduct, we cannot say that a five day suspension was excessive, arbitrary, or capricious so as to amount to an abuse of the Carrier's discretion.

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 9th day of December 1987.