

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

PARTIES TO DISPUTE: (Sheet Metal Workers International Association  
(  
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

1. Sheet Metal Worker D. Curry was unjustly assessed forty-five (45) days suspension from service without pay.

2. That the Carrier be ordered to pay Sheet Metal Worker D. Curry forty-five (45) days pay at pro rata rate of pay.

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.

As a result of charges dated March 17, 1986, Investigation held March 26, 1986 and by letter dated April 24, 1986, Claimant was assessed a forty-five day suspension for chronic and excessive absenteeism, absence without permission and failure to provide adequate justification for length of absence.

Claimant is a Sheet Metal Worker employed by the Carrier since 1971. After his last day of work on May 21, 1985, the record indicates that Claimant did not work until March 17, 1986. Claimant's absence record during the period 1983 until he returned to work in March 1987 shows that he lost 234 days in 1983; 55 days in 1984; 172 days in 1985 and 52 days in 1986.

Initially, the Organization contends that the Hearing was not conducted in a fair and impartial manner. We have closely reviewed the record and we disagree. Giving the Organization the benefit of the doubt, the rulings of the Hearing Officer objected to by the Organization were non-prejudicial.

With respect to the merits, Carrier's Rules 5 and 7 state:

- "5. Employees must be at their respective work locations and ready to begin work at the beginning of their bulletined assignment unless excused by proper authority.
7. Employees must not absent themselves from their duties without permission from the proper authority. Repeated and chronic absenteeism will subject an employee to investigation and possible discipline. Claims of sickness under false pretenses are recognized as being absent without permission."

We are satisfied that substantial evidence supports the Carrier's conclusion that Claimant violated the above rules. The real question in this case is whether substantial evidence shows that Claimant's absence record was so repeated and chronic to justify the disciplinary action. This Board has long held (consistent with the above rules) that excessive absenteeism that goes beyond reasonable limits need not be tolerated even though legitimate reasons for the absences exist. Second Division Awards 11114, 10601 and awards cited therein. Here, Claimant missed work for approximately ten continuous months commencing after May 21, 1985 for a variety of reasons (i.e., injuries suffered from a gunshot wound to Claimant's wrist while off duty, migraine headaches, bursitis of the hip and chest pains). Although the Carrier requested on numerous occasions that Claimant return to work, for those reasons, Claimant did not do so. Assuming for the sake of argument that the Organization is correct that the absences were for legitimate reasons and the Carrier was made aware of those reasons and further assuming that the medical documentation for those absences was sufficient (and thus putting aside the questions raised in the record that by letter dated September 17, 1985, Claimant's doctor stated that "I expect that he will be able to return to work in possibly 3 week[s]" and Claimant did not return for six months), the fact remains that the absences, albeit arguably legitimate, were nevertheless of such duration to be considered repeated and chronic. Claimant's absence record during the period cited in the charge therefore fell within the prohibition of the above-cited rules and awards.

Under the circumstance, we cannot say that a forty-five day suspension is arbitrary, capricious or excessive.

A W A R D

Claim denied.

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Award No. 11580  
Docket No. 11399  
88-2-87-2-41

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1988.