

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 11736
Docket No. 11572
89-2-88-2-56

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

PARTIES TO DISPUTE: ((Brotherhood Railway Carmen/Division of TCU
(CSX Transportation, Inc.
(The Baltimore & Ohio Chicago Terminal Railroad Company)

STATEMENT OF CLAIM:

1. That as a result of an investigation held on March 6, 1987, Carman Alfred S. Vasquez was suspended from the service of the Baltimore and Ohio Chicago Terminal Railroad Company (CSX Transportation) for a thirty (30) day period, from March 14, 1987 through April 12, 1987. Said suspension of Carman Vasquez is unfair, unjust, unreasonable, an abuse of managerial discretion and in violation of Rule 26.

2. That the Baltimore and Ohio Chicago Terminal Railroad Company (CSX Transportation) be ordered to compensate Carman Vasquez for all lost wages, seniority rights, benefits and Agreement rights caused by this suspension.

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.

The Organization claims that Rule 26 demands a fair hearing; that in the instant case, the investigative officer acted as judge, jury, prosecutor and witness. The Organization accuses the investigative officer of having reached a determination prior to the investigation and claims the Carrier failed to substantiate its allegations of "excessive absenteeism."

The Carrier argues the Claimant was not unjustly assessed a 30 day suspension; that Claimant was excessively absent while alleging illness on several of the dates, and failed to properly request permission on another date, as well as basically failing to provide any evidence whatsoever to explain any of the absences. The Carrier contends the Claimant received a fair hearing and the discipline was justified.

The Claimant was given notice and the precise information regarding the charges against him, the right to representation and the right to prepare his case. The Claimant's request for postponement, which was denied, in no way denied the Claimant of his Agreement due process rights. It has been held that a fair hearing is not denied per se because multiple roles are performed by one person throughout the grievance procedure. Nothing in the Rules prohibits such participation. An examination of the record indicates the Claimant received a fair hearing in that nothing in the record disclosed that the hearing officer acted unreasonably or prejudicially. The record appears to be complete and all parties had an opportunity to introduce all relevant evidence.

The Board finds the Carrier met its burden of proof in that it substantiated the charges against the Claimant and demonstrated the Claimant was excessively absent in violation of Rule 14. The Claimant failed to provide verification of the absences and admitted to family problems being the cause of his excessive absenteeism. Employees must maintain a regular work schedule. Even excessive excused absenteeism cannot be tolerated. Such absenteeism disrupts the normal flow of work and is costly to an employer. Therefore, the Board will deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1989.