

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 19, 1987 Carman J. Jaskula was suspended from the service of the Baltimore and Ohio Chicago Terminal Railroad Company for thirty (30) calendar days. Suspension was effective April 2, 1987 through May 1, 1987, inclusive.

Said suspension of Carman Jaskula is unfair, unjust, unreasonable and in violation of Agreement Rules 26, 14 and 6.

2. That the Baltimore and Ohio Chicago Terminal Railroad Company be ordered to compensate Carman Jaskula for all lost wages, seniority rights, benefits and Agreement rights caused by his 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 contends the Carrier violated Agreement Rules 6 and 14 in assessing a thirty (30) day suspension in that the Carrier accepted, without reservation, hesitation, question or argument the Claimant's reasons for his absences. The Organization also contends that it was arbitrary and capricious for the Carrier to accept an employee's excuse at one point in time and later assess discipline for the same absence. The Organization argues that the fact that the Carrier permitted the Claimant to return to work from an absence is, in and of itself, acknowledgment that Claimant complied with Rules 14 and 6. The Organization also alleges that the Claimant was denied a fair hearing due to the multiplicity of roles of the hearing officer.

According to the Carrier, the Claimant was assessed the 30 day suspension for being absent on five occasions during the period from December 26, 1986, to February 21, 1987. The Carrier contends the Claimant was given a fair hearing, the charges against him were precise, and he was given the opportunity to prepare and present witnesses and evidence. The Carrier rejects the Organization's claim that the multiplicity of roles denied the Claimant Agreement due process. The Carrier states the record establishes the Claimant did not verify his absences and, as such, is in violation of Rule 14, and that prior discipline for prior absenteeism deems the Claimant aware of the unacceptable nature of his absences in the instant case.

The Carrier's claim that the Claimant did not report off duty for five days in a two month period is with question. The record indicates that prior to December 26, 1986, the Claimant was without any lost time from work whatsoever during the month of November and the first twenty-five days of December, 1986. It should also be noted that on December 26, 1986, the Claimant called his supervisor at 7:50 A.M. and advised him he would be reporting to work late. The Claimant advised the supervisor that he would be reporting to work at 8:15 A.M. The supervisor instructed the Claimant not to report to work if he was going to report late. Consequently, the Claimant was denied holiday pay for Christmas Day and Christmas Eve. Additionally, he lost pay for the remainder of December 26, 1986. However, the record does indicate that the Claimant did not furnish any verification or documentation for claimed illnesses for January 25 and 26 and February 14, 1987. The record does not support the Claimant's contention, as noted above, that he complied with Rule 14 and was given permission to be absent from work on the three days he claimed illness. Further, a review of the transcript and the record indicates that the Claimant was afforded all Agreement due process rights in presenting evidence and witnesses and that the conduct of the hearing officer was consistent with those rights.

Considering the fact that the Claimant lost no time whatsoever from November 1 to December 26, 1986, including lateness, and considering the fact that the Claimant was denied holiday pay for Christmas Day and Christmas Eve due to his supervisor's refusal to permit him to clock in late on December 26, 1986, the Board will reduce the suspension from 30 days to 15 days. This 15 day suspension is based on the fact that the Claimant was clearly in violation of Rule 14 for his absence on February 21, 1987; that the Claimant did not establish that he properly sought and received permission for absence on the days he claimed illness; and that the Claimant did not voluntarily or otherwise provide any verification for those absences.

While the Board does not agree with the Carrier that the Claimant's absences were extensive to the extent of warranting a 30 day suspension, the Claimant must understand that unscheduled absences are just as disruptive to the operation of the Carrier's business as are excessive absences. In consideration for the wages and benefits that the Carrier provides to its employees, it expects work to be done on a regular and continuous basis with as little disruption to its operation as possible. The 30 days suspension is reduced to a 15 day suspension with all lost wages and benefits as provided by the Agreement.

Form 1  
Page 3

Award No. 11737  
Docket No. 11575  
89-2-88-2-65

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Executive Secretary

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