

The Second Division consisted of the regular members and in addition Referee Donald E. Prover when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
(Chicago and Northwestern Transportation Company)

STATEMENT OF CLAIM:

1. Under the current controlling Agreement, Mr. T. Bolton, Laborer, Chicago, Illinois, was unjustly dealt with when suspended for a period of five (5) days (August 31, 1989 through September 4, 1989), following a hearing held on August 23, 1989.

2. That accordingly, the Chicago and Northwestern Transportation be ordered to compensate Mr. Bolton for all time lost at the pro rata rate and the mark removed from his record.

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 Claimant was employed as a laborer by the Chicago and Northwestern Transportation at Chicago. The Claimant reported 17 minutes late for work on July 20, 1989, and did not work on August 9, 1989, due to sickness. Claimant was notified under date of August 14, 1989, to attend a formal investigation; charges as follows:

"Your responsibility for violating the 'Equipment Management Absenteeism Policy.' Your tardiness became excessive when you were late on July 20, 1989 and absent on August 9, 1989."

It was agreed on the property that the July 20, 1989, date was outside of the prescribed Time Limit Rule, leaving only the August 9, 1989, incident to be considered by this Board.

The facts of record indicate that Claimant was absent on August 9 due to illness. Claimant's absenteeism allegedly became excessive as the result of this incident. This Board when reviewing the evidence introduced at the Investigation could find no substantial facts to support the charge that Claimant's absence on August 9 constituted excessive absenteeism. No dates of prior absenteeism by Claimant were introduced at the Investigation. Reference is made in the Investigation to conferences that various supervisors had with the Claimant in 1988 and to a letter of warning sent to the Claimant in 1988. However, neither the letters confirming the conferences nor the letter of warning were introduced at the Investigation. This Board thus is left in the dark as to the contents of the letters and the incidents prior to August 9, 1989, that Carrier may have used as a basis for charging the Claimant with excessive absenteeism and being in violation of their Absenteeism Policy.

The Carrier in support of its position cites Awards 68, 69, and 70 of PLB 3166 and Second Division Award 9480. We have reviewed these Awards and find in each instance Carrier Officials introduced evidence at the Investigations that proved conclusively that the Claimants were guilty of excessive absenteeism. In the instant case no such evidence was introduced at the Investigation. Merely referring to conferences and a warning letter without introducing some evidence as to their actual contents does not, in this Board's opinion, constitute conclusive evidence.


It is our conclusion that in this case the Carrier did not meet the "burden of proof" principle, therefore, the Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of January 1991.