

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

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
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(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. That the Chicago and North Western Transportation Company (hereinafter referred to as the "Carrier") violated the provisions of the Joint Agreement, as amended July 1, 1979, specifically Rule 35, when, subsequent to an investigation which was neither fair nor impartial, it unjustly and improperly suspended Council Bluffs, Iowa Machinist employee D. L. Smith (hereinafter referred to as the "Claimant") from service for a period of five (5) days.

2. That accordingly, the Carrier compensate Machinist Smith for time lost for vacation and other benefit rights, and that record of the investigation proceedings, including reference to his unjust discipline, be expunged from his personal 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.

As a result of a Hearing held on July 21, 1988, Claimant was found guilty of excessive absenteeism and tardiness and suspended for five (5) days. Claimant had been late for his third trick Machinist position at Council Bluffs Diesel Shop on January 12th, February 25th, and March 3, 1988. Claimant had been absent, most often account of illness on November 2nd, November 20th, December 4, 1987. Since the beginning of 1988, Claimant had been absent January 14th, February 26th, February 29th, May 20th, May 25th, June 6th, June 10th and July 7th. Following the July 7th absence Claimant had been notified by letter of July 13, 1988 to attend the above stated Hearing where the Organization took strong exception.

The Organization argued at the Hearing, throughout the dispute on property and in its Submission to this Board that the Carrier has violated Rule 35 of the Agreement. In particular the Carrier violated subsection (c) which reads:

"Such hearing will be held within thirty (30) calendar days from date of the occurrence to be investigated or not later than thirty (30) days from the date the supervising officer would have knowledge of the alleged offense."

The charge against Claimant included the above listed dates beginning in January, 1988. The Organization argues that the letter of notification was by Rule 35(c) applicable only to the July 7, 1988 date, as all other dates pre-date the Agreement's time constraints. The Organization strongly argues that all dates prior to the thirty (30) days are precluded from consideration.

The Organization has also argued that the Hearing failed to provide the necessary probative evidence and lacked the necessary neutrality to be considered fair and impartial. In an eight page response on property, the Organization noted a "total disregard" for due process, lack of objectivity and the introduction of Safety Rules and regulations for which Claimant was not charged. The Organization also noted that the Claimant's absences were for the most part excused and granted by the Carrier in full compliance with Rule 20 which states that "an employee detained from work on account of sickness or from other cause shall notify his foreman." The Claimant complied with Rule 20 and then was disciplined for his behavior. The Organization finds that Carrier's actions unjust.

Our review of the record on property and the Rules cited by the Organization finds the evidence sufficient to support Carrier's discipline. The Hearing was held as per Rule 35(c) within 30 days of the occurrence to be investigated. The occurrence which triggered the policy was July 7, 1988. In the event the evidence properly substantiates that date as one of continued absence within the framework of the Absenteeism Policy on property, it complies with Rule 35(c). Claimant was charged with "excessive" absenteeism, which is the accumulation of absences beyond reasonable acceptability. The record substantiates that Claimant was absent on July 7, 1988. As such, we find the Carrier's consideration of past absences legitimate to support the proper evaluation of whether said additional absences beyond the triggering date were excessive.

The Absenteeism Policy was complied with in these instant circumstances. A discussion with the Claimant as to his continued absences occurred on March 19, 1988, with his immediate contract Supervisor. On April 6, 1988, Claimant was counseled by his immediate office Supervisor. Following a performance review held May 17, 1988, the Claimant received a Letter of Review.

Claimant was placed on the Carrier's Discipline System by letter dated June 21, 1988. The record indicates Claimant knew his attendance was unsatisfactory. The seven absences due to illness were for different problems and only one required a doctor's care. While the Claimant did call in each time when he was ill as per Rule 20, Claimant's absenteeism nevertheless constitutes "excessive absenteeism."

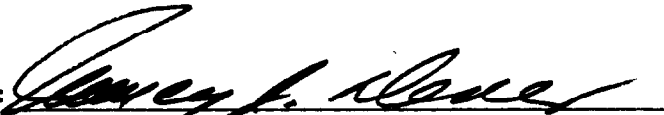
On the whole of this record, the Board finds the Claimant was afforded a fair and impartial Investigation where the charges were substantiated. Rule 35(c) was not violated. Rule 20 does not justify continued problems with absenteeism and tardiness after Carrier has counseled and attempted throughout progressive action to alter the behavior (Second Division Awards 10037, 9705; Public Law Board 3166, Award No. 45). The Hearing Officers leeway in reading in additional Rules and eliciting response was not sufficient to deny due process and the full protection of the Claimant's Agreement rights. Sufficient probative evidence supports the finding of guilt. This decision is consistent with numerous Awards (Second Division Awards 11887, 11872, 11918; Public Law Board 3166, Award Nos. 68, 69 and 70). The Claim is denied.

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 24th day of July 1991.