

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

PARTIES TO DISPUTE: (International Brotherhood of Firemen & Oilers
(Chicago and Illinois Midland Railway Company

STATEMENT OF CLAIM:

1. Under the current controlling Agreement, Mr. L. Douglas, Laborer, Springfield, Illinois, was unjustly dealt with when suspended for a period of fifty (50) days, following a hearing held on January 3, 1990.

2. That accordingly, Chicago and Illinois Midland Railway Company be ordered to compensate Mr. Douglas 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, in service with the Carrier since January 22, 1971, was suspended for 50 days as a result of an Investigation held on January 3, 1990. The suspension resulted from the Carrier's contention that the Claimant had failed to follow the Carrier's instruction with respect to obtaining medical evidence for any absence as a result of illness. In accordance with the Carrier's demerit and disciplinary policy, a 50 day suspension was then issued.

The Organization stated the suspension of this Claimant for a period of 50 days was arbitrary and capricious. The Claimant was at work on November 16, 1989, and became ill. He asked for and received permission from Carrier management to leave the premises. The Claimant was not able to produce a doctor's note verifying his illness because he was unable to see his physician until December 23, 1989. The Organization noted the Claimant was allowed to

work on the first day of his return, which was November 20, 1989. The Carrier then withheld the Claimant from service from November 22, through December 22, 1989, whereupon the Claimant then returned to service. He worked on December 25, 26 and four hours on December 27, 1989, without providing the Carrier a doctor's excuse. The Organization noted the Claimant is an employee with 19 years of service and was in compliance with Rule 28 of the Agreement and, therefore, the Carrier is in direct violation of Rule 28 by discriminating against the Claimant because he was out of service due to illness. The Organization argued the Claimant did not willfully violate any of the Carrier's Rules, nor did he refuse any direct orders, and the 50 day suspension is neither warranted nor justified and is extreme and excessive discipline. The Organization asked that the Claimant's record be cleared of this incident and he be made whole for the time lost.

The Carrier stated the Claimant was insubordinate in that he failed to provide the required doctor's note for the absence which occurred on November 16, 1989, and following. While this Claimant has 19 years of service, he has a history of poor attendance and performance. The Claimant was instructed both verbally and in writing that because of his excessive absenteeism, he would be required to furnish a physician's statement to substantiate any absence due to illness. The Claimant admitted that he had failed to furnish the required statement as set forth in letters to the Claimant by his immediate supervisor. The discipline assessed the Claimant was proper and in accordance with the Carrier's disciplinary policy which has been in effect since May 1, 1988. The Carrier stated there was no violation of Rule 28 since there was no discrimination against the Claimant due to his absence on account of illness.

The Board finds the Claimant has been the subject of substantial efforts by the Carrier to have him comply with its Rules. Those warnings concerned among other things continual failure by the Claimant to properly protect his assignment. The Organization stated that requiring the Claimant to obtain a doctor's note when absent on account of illness was discriminatory and a violation of Rule 28. The Board finds that under the specific circumstances of the case this requirement by the Carrier was not arbitrary and capricious, nor in any way discriminatory. It is clear from the record that the Claimant understood the requirement, was advised on several occasions as to what he must do in order to comply with the Carrier's request and yet willfully did not comply. In fact, the Claimant did not even attempt to comply until approximately one month after the incident. The fact that the Claimant was allowed to work on several days during the period subsequent to November 20, 1989, has no bearing on the Board's decision. Normally this type of offense would not result in the substantial penalty given to this Claimant, however, when taking into account the recent disciplinary record of the Claimant, the Board finds that the Carrier did not act in an arbitrary and capricious manner and the Board will not substitute its judgment for that of the Carrier's with respect to the penalty imposed. Therefore, the claim will be denied.

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Award No. 12219
Docket No. 12097
91-2-90-2-194

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 18th day of December 1991.