

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12308
Docket No. 12269
92-2-91-2-68

The Second Division consisted of the regular members and in addition Referee Nancy Connolly Fibish when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
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(Consolidated Rail Corporation

STATEMENT OF CLAIM:

Appeal from discipline of three (3) days suspension, modified by Manager Labor Relations from twenty (20) days suspension assessed T. L. Traficante (#537493), Electrician Juniata Locomotive Shop, Altoona, Pennsylvania, as shown on Notice of Discipline, Form G-32, dated November 22, 1989.

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.

Claimant was employed by the Carrier, at its Altoona, Pa. facility when he was marked absent from duty on October 5, 1989, and October 26, 1989. On October 30, 1989, the Carrier served the Claimant with a notice of trial, charging him with excessive absenteeism, on the basis of his total record of absenteeism for the period of January 17 through October 26, 1989. The Investigative trial was set for November 3, 1989, but was continued, at the Organization's request, until November 14, 1989. Following the Hearing, Carrier assessed Claimant with 20 days suspension on November 22, 1989, but reduced that suspension to three days on December 27, 1989, after the appeal Hearing held on December 20 at the Organization's request. In keeping with Rule 6-A-(4)(b)(1) of the contract, that three day suspension was deferred because the employee had no further discipline assessed on his record within the six month period following notice of discipline.

There is no dispute between the parties that the Claimant was absent on October 5 and October 26, 1989, or that he had been absent, quit early, or started late on the 22 dates listed on his attendance record, which was entered as a Carrier exhibit at the Hearing. However, the Organization contends that dates when the Claimant was on sick leave should not be used against him since these constitute legitimate reasons for absence. It also states that management violated the controlling Agreement by charging the Claimant with absences outside the 30-day period provided under Rule 6-A-3(a). It requests that discipline be vacated and Claimant made whole under Rule 7-A-1(e).

The Carrier's position is that the legitimacy of the absences is not at issue but rather the total number of absences over the January-October 1989 period. Management also maintains that it was within the 30-day time limits called for under Rule 6-A-3(a).

The Board has examined the entire file, including the record of the Hearing, and the supporting arbitration awards cited by both parties. The employee was absent 18 full days during the nine month period in question; the four other absences were for periods of from less than an hour to an hour and a half, for either early quits or late starts. Employee had received a letter of warning about his absenteeism in July, 1989, following oral discussion of same on several occasions. At the appeal Hearing held on December 20, 1989, the Organization emphasized its testimony given at the earlier Investigative Hearing to the effect that the employee had had a lot of personal problems during the nine-month period in question, his divorce, the death of his mother, other family illness, for which he had had to take sick leave because he had had no vacation time available to which he could charge it, as well as those occasions he had been absent due to stress-induced illness. The Carrier took the Claimant's prior discipline record, which was clear, and the personal circumstances surrounding his sick leave absenteeism into account when it reduced its earlier imposed discipline of 20 days to three days in December 1989.

The two particular dates cited by the Carrier in its charge were the triggering dates that prompted management to take disciplinary action. However, management was not precluded from relying on the total number of absences during the nine-month period, including the prior record of 20 absences from January 17 through September 21, 1988. Claimant's contention that Rule 6-A-3(a) precludes consideration of the Claimant's attendance record prior to the triggering dates cannot be accepted, as excessive absenteeism is something that normally takes place over an extended period of time. See, Second Division Awards 8546, 10268.

The definition of excessive absenteeism is a relative matter and must be decided on a case-by-case basis, as pointed out in PLB No. 1790, Award 117. The Board finds that the number of absences during the period at issue in this case is sufficient to constitute excessive absenteeism. Furthermore, several Public Law Boards, in decisions concerning this Carrier, have ruled that even an employee's excused absences are subject to discipline by management, even if caused by genuine illness. See, e.g., Special Board of Adjustment No. 910, Award 32; PLB No. 2263, Award 37; and PLB No. 2945, Award 24.

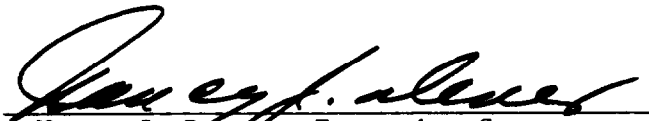
With respect to the assessment of the three-day suspension, the Board finds that there is substantial evidence to support the Carrier's decision to assess this discipline against the Claimant. The Carrier took the Organization's presentation of mitigating circumstances into account, as well as the employee's past record, when it reconsidered its original assessment of 20 days and reduced it to three days. Given all of the facts in the record, this Board will not substitute its judgment for the Carrier's with respect to the appropriateness of the discipline that was finally assessed. Since this discipline was not imposed, in keeping with Rule 6-A-4(b)(1), the Claimant did not actually lose any time. However, the three-day suspension stands on his record as assessed.

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 29th day of April 1992.