

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 12526  
Docket No. 12489  
93-2-92-2-4

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

PARTIES TO DISPUTE: (International Association of  
(Machinists and Aerospace Workers  
(Consolidated Rail Corporation  
(Conrail)

STATEMENT OF CLAIM:

- "1. That the Consolidated Rail Corporation, hereafter referred to as the Carrier, violated the controlling Agreement, Rule #6, but not limited thereto, when they unjustly dismissed Machinist M. L. Moss, Enola, Pa., from the service of the Carrier.
2. That accordingly, Carrier be ordered to return Machinist M. L. Moss, hereafter referred to as the Claimant, to active service, with all rights unimpaired and pay him for all lost time wages for the period from June 22, 1988, until he is returned to service."

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 employe 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 notified to appear for a hearing in connection with the following charge:

"Failure to report for duty on Saturday, which in light of your previous attendance record as indicated on the attached, constitutes excessive absenteeism."

The hearing was conducted in an appropriate manner on the scheduled date. Claimant was notified that he was dismissed from service with the Carrier in all capacities. The claim was progressed through the normal contractual appeal processes on the property and is now before this Board for review.

The record reveals that the Organization and Claimant pleaded guilty to the charges, but asked for leniency on the Carrier's part based on their view that the absences were beyond the control of Claimant. The absenteeism record of Claimant over several years had been far from exemplary. He had received two letters of warning and discipline had been assessed on ten different occasions. The most recent were sixty day suspensions in 1985 and 1988.

In view of the foregoing and the entire record we find that Claimant was afforded due process as required by the Contract and that the Carrier's action was not arbitrary nor capricious.

A long list of decisions by this Board have held that under such conditions the power of leniency resides with the Carrier and not this Board.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
Nancy J. Dever - Secretary to the Board

Dated at Chicago, Illinois, this 21st day of April 1993.