

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13215

Docket No. 13083

98-2-95-2-106

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(International Association of Machinists and
(Aerospace Workers

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Dispute - Claim of Employee

(1) That Consolidated Rail Corporation arbitrarily and capriciously reprimanded Machinist S. M. Miller following trial held on March 8, 1994.

(2) That accordingly, Machinist S. M. Miller should be paid for all lost time, including overtime, and have his record cleared of any reference to the charges."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 were given due notice of hearing thereon.

By letter dated February 11, 1994 Claimant, a Machinist at Carrier's Enola, Pennsylvania Diesel Terminal, was instructed to appear for trial on charges of excessive absenteeism. As a result of an Investigation held on March 8, 1994, Claimant was issued a Letter of Reprimand for his failure to report in conjunction with his prior attendance record. This claim protests such discipline.

The transcript of the trial reveals that Claimant was 15 minutes late on January 22, 1994 and was absent on February 8, 1994 due to problems associated with inclement weather. The record reveals that the area was experiencing severe snow and ice storms during this period, and that Claimant called in to notify his Supervisor of his lateness/absence. The record also contains a prior Letter of Warning for excessive absence issued to Claimant on October 4, 1993 concerning five absences between April and September 1993. Carrier's Attendance Policy was introduced into the record and requires employees to be at work when scheduled; it provides no exceptions for unusual circumstances or inclement weather.

Carrier argues that Claimant admittedly violated its Attendance Policy by being late on January 22 and absent on February 8, 1994, and his prior record supported the issuance of discipline to him for excessive absenteeism in this case. It notes that a Letter of Reprimand was very mild considering his short term of employment and past record, relying upon Second Division Awards 8228, 8238, 12159, 12302, 12526, 12691, 12741; Third Division Award 22973; First Division Award 24286. Carrier contends that it may discipline an employee for attendance-related absence even if there were legitimate reasons for the absence, such as inclement weather, citing Public Law Board No. 4544, Award 5; Public Law Board No. 5644, Award 1.

The Organization contends that Carrier failed to prove that Claimant was absent on January 22, 1994 as charged, as he was merely 15 minutes late. It further avers that Carrier failed to consider the fact that the lateness and absence were caused by unusually severe weather conditions, and that Claimant's conduct on the dates in question was not culpable and was beyond his control. The Organization also argues that various procedural errors denied Claimant a fair and impartial Hearing.

A careful review of the record convinces the Board that there exists substantial evidence to support Carrier's issuance of a Letter of Reprimand to Claimant for his attendance-related violations on January 22 and February 8, 1994, and that the Organization's contentions concerning the lack of a fair Hearing are without merit.

While there is no doubt that inclement weather may have contributed to Claimant's inability to fulfill his employment responsibility on these dates, Carrier must be able to rely upon employee attendance in order to conduct its business and is empowered to issue discipline for violations of its attendance policy. Second Division Award 12302. Carrier proved such violations in this case, as well as a prior record of attendance-related discipline, and the Organization failed to show that Claimant was somehow treated differently than other employees similarly situated on these dates or that Carrier's expectations concerning Claimant's attendance exceeded those of other employees. Under such circumstances, the claim must fail.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 26th day of February 1998.