

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

Award No. 13369

Docket No. 13333

99-2-98-2-19

The Second Division consisted of the regular members and in addition Referee Robert L. Hicks when award was rendered.

(International Association of Machinists and  
( Aerospace Workers (District 19)

**PARTIES TO DISPUTE:** (

(Consolidated Rail Corporation

**STATEMENT OF CLAIM:**

“1. Consolidated Rail Corporation arbitrarily and capriciously dismissed Machinist R. J. Montellanico following trial held on January 28, 1997.

2. Accordingly, Machinist J. Montellanico should be immediately restored to service, paid for all time lost, including overtime, be credited for any and all fringe benefits that would have accrued had not the unjust discipline been imposed, 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.

In reviewing the transcript (which was somewhat unusual and, at times, hard to follow), Claimant was charged with excessive absenteeism when he marked off one day, December 14, 1996. As far as the Carrier was concerned, this one day absence occurring within 60 days of resuming service following a 60 day suspension for excessive absenteeism, was the straw that broke the camel's back.

Claimant has a seniority date dating back to 1976, but he had been on furlough from 1981 to 1993, when he was recalled to service. At about the time Claimant returned from furlough, Carrier instituted a so-called LeVan policy of discipline in an effort to establish some unity in the disciplinary process. That policy clearly waived any transgressions that occurred prior to September 1, 1993.

This Board, therefore, will consider only incidents that occurred subsequent to September 1, 1993, that were established in the testimony at the Investigation.

There is no dispute concerning Claimant's absence on December 14, 1996, nor is there any doubt as to the reason Claimant was absent.

Claimant did have a doctor's statement (as he had at other times he was absent). Because Claimant's absence on December 14 was supported by a doctor's statement, the Organization believes the discipline assessed "was outrageous."

Board authority has clearly established that the Carrier can discipline for excessive absences even though such absences may be legitimate. For instance, in Second Division Award 9865, the Board held that:

**"It is common and acceptable, unless expressly prohibited by the contract, for a Carrier to charge an employee with excessive absences even where some of the absences are due to illness. The Carrier, in general, has the right to expect reasonably regular attendance from its employees. Constantly recurring, relatively short periods of absence which establish a pattern of chronic absenteeism over a period of time need not be tolerated by an employer even though notice has been given for each of the absences and even though the reasons tendered appear to be credible."**

Claimant has been disciplined three times prior to the time of this incident, all for excessive absenteeism. It appears Claimant has a hard time understanding that when the Carrier establishes a 40 hour per week job, it is expected the employee assigned will work the 40 hours without fail.

Pursuant to the trial transcript, Claimant was absent only 19 days over a period of time just under a three year span. In the on-property correspondence, the Carrier stated that Claimant lost twice that much time, but such facts were not in evidence during the Investigation.

Under the circumstances prevalent here, the Board will reinstate Claimant to the service, without any pay for time lost, providing Claimant successfully fulfills two condition precedents.

He must establish contact with and set up a session with a counselor to discuss his absenteeism and follow whatever program is established by the counselor that will convince Claimant of the necessity to work a steady 40 hour week, and two, he must furnish the company doctor evidence from his own doctor that his health is such that he is physically capable of fulfilling his 40 hour work week schedule. The required statement of health must be secured and in place within 30 days of being notified of this Award. Likewise, within the same 30 day period he must contact a counselor to discuss his absenteeism and commence whatever program is set up by the counselor.

If Claimant fails without a good reason to abide by the terms of this Award, he will remain in the dismissed category.

### **AWARD**

**Claim sustained in accordance with the Findings.**

**Form 1**  
**Page 4**

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Second Division**

**Dated at Chicago, Illinois, this 23rd day of February 1999.**