

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**Award No. 13619**

**Docket No. 13521**

**01-2-99-2-127**

The Second Division consisted of the regular members and in addition Referee Ann S. Kenis when award was rendered.

(International Association of Machinists and  
( Aerospace Workers

**PARTIES TO DISPUTE:** (

(Burlington Northern Santa Fe Railway Company (former  
( Atchison, Topeka and Santa Fe Railway Company)

**STATEMENT OF CLAIM:**

“That the Atchison, Topeka and Santa Fe Railway Company (hereinafter referred to as the ‘Carrier’) violated Rule 40 of the Controlling Agreement, Form 2642-A Std., as amended, between the Atchison, Topeka and Santa Fe Railway Company and its Employees represented by the International Association of Machinists and Aerospace workers (hereinafter referred to as the ‘Organization’) when it wrongfully and unjustly dismissed Kansas City, Kansas Machinist A. A. Zaragoza (hereinafter referred to as the ‘Claimant’) for allegedly being absent without proper authority.

Accordingly, we request that for this improper discipline, he be compensated for all lost time and benefits as provided for in Rule 40 (i) of the Controlling Agreement, as amended. Additionally, we request that all records and reference to this matter be removed from his personal 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 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.**

**The Claimant began his employment with the Carrier on July 14, 1997. At the time of his discharge, he was assigned as a machinist at the Carrier's Argentine LMIT facility in Kansas City, Kansas.**

**There is no dispute about the events which led to the Claimant's dismissal. On Saturday, October 10, 1998, he called the phone number normally used when an employee requests permission to layoff and laid off sick. On Saturday, October 17, 1998, he called the same phone number and advised that he would not be in due to car trouble.**

**The Claimant was subsequently notified to attend an Investigation in connection with the charges that he failed to follow instructions, was absent without proper authority, and was excessively absent. After the Investigation, held on October 26, 1998, he was discharged.**

**The evidence developed at the Investigation Hearing supports the following key points. First, the Claimant had been instructed on several occasions that he was required to contact a general foreman or shop superintendent to obtain permission to be absent from duty. In the absence of such permission, the Claimant was informed that he would be considered absent without authority. The Claimant admitted being so advised and he further admitted that he did not comply with those instructions on October 10 and 17, 1998. The only reason he gave for not following the instructions was that he did not know the telephone number although he acknowledged it was given to him on more than one occasion.**

**Second, the excuses proffered by the Claimant for his absences were deemed unconvincing by the Hearing Officer and the Board has no basis to interfere with that determination. The Claimant produced a doctor's release after the fact for his alleged illness, but conceded that he did not see the doctor. Moreover, he never furnished any documentation to support his claim that the October 17 absence was due to car trouble.**

**Third, in his short tenure with the Carrier, the Claimant was disciplined for excessive absenteeism on three prior occasions. On April 6, 1998, he received a Level**

1 formal reprimand. On April 14, 1998, the Claimant waived investigation and accepted a Level 2 suspension of five days for his failure to follow the instructions set forth in the letter dated April 6, 1998 concerning his absenteeism. On September 15, 1998, he again waived investigation and accepted a Level 3 suspension of 15 days for excessive absenteeism.

The Organization contends that the Carrier's absenteeism policy, implemented on March 1, 1998, was arbitrarily and capriciously applied in the Claimant's case. The Board does not agree. If ever there were a case to be made for excessive absenteeism, this is the one. Notwithstanding the Organization's arguments to the contrary, it is clear that consideration was given to the Claimant's individual circumstances. However, the Claimant demonstrated by his own actions that he would not or could not report to work on a regular basis. He did not respond to progressive discipline, and this fact was properly considered by the Carrier in determining that it had reached the end rung of the disciplinary ladder. The claim is denied.

**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 4th day of June, 2001.