Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 13621
Docket No. 13523
01-2-99-2-130

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

PARTIES TO DISPUTE: (International Association of Machinists and
(Aerospace Workers
(
(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 Topeka, Kansas Machinist Steven G. Blake (hereinafter referred to as the "Claimant") for alleged excess absenteeism.

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 was first employed by the Carrier as a laborer on March 13, 1979. A month later, he was promoted to a machinist helper and two years after that he was promoted to a machinist position. At the time of his discharge, the Claimant worked at the Carrier's repair facility in Topeka, Kansas.

The Claimant's history of absenteeism stands unrefuted on this record. After a conference on July 2, 1997 to discuss the problem, the Claimant was issued a level 3 suspension. In addition, the Claimant agreed to the development of an action plan to prevent future occurrences of absenteeism. The action plan is set forth in a letter dated July 2, 1997. In that letter, the Claimant was informed that he would not be allowed unscheduled absences without receiving permission from the general foreman or the equipment supervisor. In addition, the letter stated that leaving a telephone message would not suffice; the Claimant was required to make personal or verbal contact with supervision in order to obtain permission to be absent. The contact telephone numbers were listed in the letter.

The Claimant did not follow the action plan. Thereafter, he and his Union representative signed a last chance agreement dated October 21, 1997, in which the Carrier agreed to forego a disciplinary investigation on the understanding that "any additional Rule violations of this nature within the next 12 months will result in immediate dismissal without benefit of a formal investigation."

During the next 363 days, the Claimant was absent or missed time for a number of reasons. Many occurrences were excused by supervision, but there were three occurrences that were unauthorized. The Organization contends:

> "There were only three times in the year that he was absent without permission and they were because he overslept. It occurred on March 10, June 16 and October 19, 1998. Surely common reason would justify and allow three unauthorized absences within a year's time of an employee of over 19 years of service."

During the handling of this claim, the Organization also argued that the Carrier violated that portion of Rule 40(a) of the controlling Agreement which states, "No employee shall be disciplined without first being given a fair and impartial investigation" when it dismissed the Claimant from service on October 20, 1998 without holding a hearing.

The contentions raised by the Organization have a common thread. They address just cause issues which do not apply when reviewing a last-chance Agreement. The Claimant and the Organization entered into a trade off with the Carrier. The Claimant was given the opportunity to retain his employment status in return for complying with the Carrier's conditions concerning attendance. The Claimant relinquished certain procedural and due process protections in exchange for being given one last chance to correct his attendance problem.

There is no indication on this record that the conditions set forth in the Agreement were unfair or inadequately communicated to the Claimant. Moreover, he was represented by the Organization when he entered into the Agreement. The terms imposed can hardly be viewed as unreasonable when the Claimant's long history of attendance problems is considered.

Concluding as we do that a valid last chance Agreement was in effect, the only remaining question before the Board is whether the Claimant violated its terms. We hold that he did, on at least three occasions. That being the case, we find that the Claimant was in violation of the October 21, 1997 letter of Agreement and his dismissal therefore was warranted.

It should be noted that our findings and conclusions herein are based on the evidence and arguments presented by the parties during the handling of this case on the property. The Board is not permitted to consider de novo alleged matters of dispute not previously raised or considered by the parties in the steps below. This principle is so well-established that it need no citation here.

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.