

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13691

Docket No. 13541

02-2-00-2-17

The Second Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

(Brotherhood of Railway Carmen Division
(Transportation Communications International Union

PARTIES TO DISPUTE: (

(Springfield Terminal Railway Company

STATEMENT OF CLAIM:

“Claim of the Committee of the Union that:

1. The Springfield Terminal Railway Company violated the terms of our current agreement, in particular Rule 13, when they arbitrarily suspended Raymond A. Delano from service for thirty (30) calendar days as a result of an investigation held on May 27, 1999.
2. That, accordingly, the Springfield Terminal Railway Company be ordered to compensate Carman Raymond A. Delano in the amount of eight (8) hours pay for each workday he was withheld from service effective June 22, 1999. Furthermore, that all correspondence relating to this investigation be removed for his personal record and file.”

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.

After Investigation, the Claimant received a 30 working day suspension by letter dated June 17, 1999 for excessive absenteeism "highlighted by the thirty-two (32) hours missed from January 1, 1999 through April 30, 1999."

The record shows that the Claimant missed 32 hours - "four complete days." Tr. 8. Those missed days were specifically broken down as one day in January 1999; two days in March 1999 and one day in April 1999. Tr. 7; Carrier Exh. A, p. 50.

The Carrier relied upon a shop average of 13.39 hours to support its disciplinary action. Carrier Exh. A at 49. According to the Carrier (Tr. 9-10):

"[Q] ... [A]re you stating ... that the 32 hours missed is excessive in the time frame of January 1, 1999 to April 30, 1999?

[A] Yes.

[Q] And this is excessive absenteeism in your interpretation?

[A] Yes it is.

[Q] Alright. And your basing this on the shop average in that time frame?

[A] Yes I am."

In Second Division Award 13690, we discussed the problems inherent in "blindly using a shop average to determine whether an employee is excessively absent":

"... How is Claimant to know when he takes off that at some point in the future the absence history of other employees will show that his absence pattern is greater than the shop average? What if the other employees show an average of one day's absence for the year and Claimant takes off a mere two days for that year? Should Claimant be disciplined for excessive absenteeism because his absence rate was double the shop average? Obviously not. See e.g., Second Division Awards 13502, 13020 between the parties (rejecting reliance upon the shop average). But compare, PLB 6073, Award 3 between the parties (approving reasonable use of a shop average). On the other hand, what if all of the employees had absence problems and the shop average was 800 missed hours per year and Claimant only had 750

missed hours? Could not the Carrier also discipline Claimant for excessive absenteeism? Obviously it could. Therefore, the concept of "shop average" does not really help in deciding these cases."

In Award 13690 we looked at the entire picture. We noted that "[t]hese must be case-by-case calls using the well established standard in discipline cases that the burden is on the Carrier to demonstrate substantial evidence to support its conclusion that Claimant engaged in misconduct and to further show that the amount of discipline was not arbitrary."

In Award 13690, we upheld the decision to discipline because the record showed that the employee missed over two weeks work in a year; the 14 instances of absences were numerous; and the absences were reoccurring and scattered throughout nine separate months during the period in dispute.

We cannot say the same in this case. Here, the Claimant missed four days in four months. In such a brief period of time, we cannot say that substantial evidence exists for us to find that such a pattern amounts to excessive absenteeism - particularly where, as here, the Carrier solely relied upon the "shop average" to justify its disciplinary action.

On the basis of the above, the claim will be sustained. The Claimant shall be made whole.

AWARD

Claim sustained.

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 24th day of April, 2002.

