

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13801
Docket No. 13681
04-2-02-2-42

The Second Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Kansas City Southern Railway Company)

STATEMENT OF CLAIM:

- “1. That the Kansas City Southern Railway Company erred and violated the Controlling Agreement, particularly, but not limited to, Rules 15 and 29, when Shreveport, Louisiana Electrician C. K. McCormick was unjustly and arbitrarily assessed a ten (10) day suspension from the services of the Kansas City Southern Railway Company, beginning January 6, 2002, and ending January 15, 2002, following an investigation held on December 6, 2001.
2. That accordingly, the Kansas City Southern Railway Company make whole Electrician McCormick as follows:

 - a. Compensate him for all wages lost at the prevailing rate of pay of electricians and all applicable overtime with interest at the judicial rate;
 - b. Make him whole for any qualifying days towards vacation rights;
 - c. Make him whole for any loss of health and welfare and insurance benefits;

- d. Make him whole for any and all other benefits including Railroad Retirement and Unemployment Insurance;
- e. Make him whole for any and all other benefits that he would have earned during the time withheld from service, and;
- f. Any record of the arbitrary and unjust disciplinary action be expunged 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.

By letter dated November 29, 2001, the Claimant was notified to attend an Investigation on December 6, 2001. The purpose of the Hearing was to determine whether the Claimant was in violation of the Carrier's Attendance Policy by failing to protect his assignment on October 21, 2001, October 29, 2001, November 5, 2001, November 27, 2001 and November 28, 2001.

After reviewing the evidence presented at the Hearing, the Carrier notified the Claimant by letter dated January 3, 2001, that it determined the evidence adduced at the Hearing to be sufficient to support the charge that he was excessively absent in violation of Rules 1.6 and 1.15.

The Organization appealed the discipline on behalf of the Claimant.

The Carrier argues there is no real dispute that the Claimant is frequently absent. It points to the Claimant's record which demonstrates that the Claimant did not have permission to be off on the days in question. It urges the Board to consider the disruption to operations caused by such absenteeism. The Carrier also maintains the Claimant was aware of the Rules and chose to ignore them. It argues that not only is such a defense not mitigating but also it justifies the discipline all the more because employees are expected to familiarize themselves with the rules.

The Organization argues that the Claimant was not guilty of violating the cited Rules and that the assessed discipline was unjust and unwarranted. It maintains the Claimant's absences were due to legitimate illness or other unavoidable cause, which is excusable by law. It also references the Family Medical Leave Act as governing as well as provisions of the contract. Further, the Organization raises several procedural arguments which it believes nullify the discipline assessed.

The Board reviewed the evidence in this case carefully. We recognize that employees are often faced with illnesses or family problems that prevent them from attending work. However, two points are important: First, there was no evidence presented to demonstrate that the Claimant requested leave under the Family Medical Leave Act. Moreover, even if he had been granted such leave, it is necessary that he advise the Carrier in advance of the necessity to take such leave. He must explain the reasons for the leave. Such leave is not a carte blanche excuse to be absent at will. Secondly, even absences for legitimate reasons can reach a point where the employee is no longer of benefit to the employer. Absenteeism is becoming a serious industrial problem. Whenever employees are absent, it disrupts productivity and creates a hardship on other employees.

There is sufficient evidence in this case that the Claimant was excessively absent. The discipline assessed was reasonable and progressive in nature. He must improve his attendance or will probably face further discipline.

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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 27th day of April 2004.