

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13853
Docket No. 13735
05-2-04-2-11

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Canadian Pacific Railway Company (former Soo Line
(Railroad

STATEMENT OF CLAIM:

- “1. That the Canadian Pacific Railway Company [Soo Line (CP/Soo)], violated the current Agreement, effective September 1, 1948, as amended in 1982, in particular Rule 35, when they wrongfully dismissed Mechanical Department Electrician Steve Billings on November 12, 2003.
2. That CP/Soo failed to provide Mechanical Department Electrician Steve Billings with a fair and impartial investigation as mandated under Rule 35.
3. That accordingly, the CP/Soo be ordered to promptly reinstate Mechanical Department Electrician Steve Billings to its service with all seniority rights unimpaired and to make him whole for any and all losses incurred including, but not limited to “straight time pay, overtime pay, vacation benefits, health and welfare benefits, Railroad Retirement benefits, and any other benefits he would have earned or received during the time held out (sic.) of service. Further, that any and all reference to this dismissal, including all correspondence, be removed from Mr. Steve Billings’ 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 notified by letter dated October 9, 2003 of alleged continued excessive absenteeism "from August 4 through October 1, having missed full days on: August 4, September 5, September 17 and October 1, and early quits on August 15 and September 16, 2003. Following a postponement, the hearing was held on October 20, 2003. Subsequently, the Claimant was notified that he had been found guilty as charged and was dismissed from the Carrier's service.

The Organization argues that the Claimant was unjustly dismissed, in that he had passed his prior two year probation without problem. The dismissal was arbitrary, capricious and excessive for an employee who called in each time and was never informed at the time that his absences were unacceptable. The Claimant was always factual and honest about his absences. The Carrier allowed the Claimant to be lulled into the belief that his absences were approved and then disciplined him with dismissal in an unfair hearing.

The Carrier maintains that it provided a fair and just hearing to consider the alleged charges of absenteeism. As for the evidence, the Claimant admitted to all of the allegations and therefore guilt was proven. The Carrier maintains that the discipline was proper given the Claimant's actions and past record.

The Board finds no procedural error in that Rule 35 was fully complied with by the Carrier. The Claimant was provided a fair and impartial hearing. On

merits, the Board notes that the Claimant not only admitted guilt, but his reasons were are not indicative of responsible behavior. Testimony from the Claimant as to each date finds the following. When asked if he was absent the full day of August 4, 2003, the Claimant said yes, because, "that was my wife's birthday." When asked if he was absent the full day of September 5, 2003, the Claimant admitted he was because, "I had no babysitter . . ." When asked if he had missed the full day of work on September 17, 2003, he again said yes and his reason was that he "took his wife to the doctor." And as for missing the full day of October 1, 2003, he said that he did not come to work because, "that was my daughter's birthday."

The Board notes that he also took early quits on August 15, 2003 for illness and on September 16, 2003 to go home and look after his daughter since his wife was sick. The Claimant also testified that he was disciplined with a ten day suspension and two years probation which was now over and he believed he had a "clean slate."

The Board notes that Mr. Billings testified to a pattern of absenteeism whereby "four out of the six days are extensions of his weekend." Additionally, Mr. Borth testified that the Claimant had no approval for any of these incidents and simply calling in is not an approved absence, its "letting your supervisor know that you won't be in so that it's not a no-call/no-show. . ."

The Carrier maintains that it properly dismissed the Claimant for continued absenteeism. This is a relatively short term employee with just over five years of service. In that time, the Claimant has had a continued discipline problem with absenteeism. It should have been clear with a ten days suspension and a two years probation that absenteeism would not be tolerated. This record and the Claimant's testimony do not provide a factual base to consider the Carrier's action as arbitrary, unreasonable, capricious or excessive. On the basis of these facts, the Board will not interfere with the Carrier's judgment. The claim must be denied.

AWARD

Claim denied.

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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 3rd day of May 2005.