

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD** DIVISION

Award Number 24540  
Docket Number TD-24274

George S. Roukis, Referee

PARTIES TO DISPUTE: ( (American Train Dispatchers Association  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

System Docket No. CR-97

**"Claim** of the American Train Dispatchers Association that appellant R. E. **Ditzler**, Assistant Chief Dispatcher, Harrisburg Movement Office, Harrisburg, PA., is not guilty of the offense 'Failure to report for duty at the Movement Office, 600 Corporate Circle, Harrisburg, PA., on July 18, 1980, which in light of your previous attendance record constitutes excessive absenteeism', per G-250 form dated July 23, **1980.**"

OPINION OF BOARD: This case involves an appeal from Carrier's **August 5,** 1980 decision to impose a fifteen (**15**) day deferred suspension for Claimant's alleged excessive absenteeism, particularly, his failure to report for duty at the Movement Office, Harrisburg, Pennsylvania on July 18, 1980. An investigation to determine the bona fides of this allegation was held on July 30, **1980**. Claimant was absent a total of **ten (10)** days during the January 18, 1980 through July 18, 1980 period, of which, eight (**8**) of the days he reported off sick preceded his scheduled rest days and one (**1**) of the days he reported off **sick** followed his assigned rest period. Claimant's rest days were Saturday and Sunday.

In defense of his petition, Claimant asserts that he was granted approved **sick** leave in accordance with the applicable provisions of Rule 20 and was never challenged to verify these absences. **He** contends that he was legitimately ill on the days he reported off, and was perplexed when Carrier charged him with the cited offense. He avers that he had been under doctor's care **since** 1976 and submitted appropriate medical evidence for most of the time he **was** absent during the 1976-1979 period. He argues that he was not charged with falsely claiming illness or injury or some other identifiable Agreement violation.

Carrier contends that his attendance record indicates a noticeable pattern of **excessive** absenteeism and asserts that this pattern, not unjustified absences, is the sole adjudicative issue herein. It argues that he did not submit medical verification for the July **18**, 1980 absence **or** any medical evidence for the days he reported off since January 18, 1980. It avers that his absences usually occurred on the days immediately preceding his scheduled rest days and notes that he was counseled about his attendance record by the Supervisor Train Operations on May 5, May **27**, and June 23, 1980. It maintains that the decisional law of the National Railroad Adjustment Board pointedly shows that excessive absenteeism is a disciplinary offense, and cited Second Division Award No. 8370 as supportive of its position. In that decision, the Division held in pertinent part that:

"**Save** for continuous (possibly **long**) periods of absence, usually due to serious illness, an employee has an obligation to appear on the job, over a period of time with consistent regularity. Constantly recurring, relatively short periods of absence which establish a pattern of chronic absenteeism over a period of time need not be tolerated by an employer even though notice has been given for each of the absences and even though the reasons tendered appear to be credible."

In our review of this case, we agree with Carrier that it has the right to discipline an employee for excessive absenteeism. A precondition of this right is a fair and **thoughtful** determination as to what reasonably constitutes excessive absenteeism. An employer has the **right** to address absences which appear to be excessive and which includes the **correlative** responsibility to control it. In fact, the weight of arbitral authority clearly holds that an employer may terminate or discipline an **employee** for excessive absenteeism. (See for **example** Second Division Award Nos. 7348 and 8564. See also Frank Elkouri and Edna Elkouri, How Arbitration Works, Third Edition, **pps.** 545, 546.)

In the case before us there is **no contestation** regarding the permissibility of Claimant's absences. He reported off properly on the days he was absent between January **18**, 1980 and July 18, 1980. He was never disciplined for the time he was absent during the 1976-1979 period, and we cannot conclude that Carrier had a definable institutionalized system wide policy whereby four (**4**) absences within a six (**6**) month period was considered excessive. The record is bereft of any policy document which would confirm the Supervisor **of Train** Operations testimony that such a policy existed or any **ancillary** documentation that **Carrier** observed a de facto policy. If such policy exists, it appears to have limited circulation.

On the other hand, we must conclude that Carrier was concerned with Claimant's attendance pattern **as** evidenced by the aforementioned official's **counselling** of Claimant on May 5, May 27, and June 23, 1980. The fact that Claimant was mostly absent on days which preceded his rest day period would warrant such advisement. Implicitly, Claimant was forewarned that his absence record was unacceptable. When he was again absent on July 18, 1980, **it was** not unreasonable for Carrier to initiate disciplinary action. The precise configuration of his absences during the first seven months of 1980 indicate a pattern that is more than coincidental and Carrier's disquiet is understandable. We do not believe, however that the deferred suspension penalty is warranted in this instance since Carrier had a concomitant responsibility to require medical evidence, at least for the July 18, 1980 absence. **Moreover**, he was allowed to report off on the other days he was absent and there is some indication that his health is not up to par. These factors, of course, do not excuse him from the charge of **excessive** absenteeism, but they supply some mitigation. We will reduce the fifteen (**15**) day deferred suspension to a Letter of Warning.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **Employees** involved in this dispute are respectively Carrier **and Employees** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

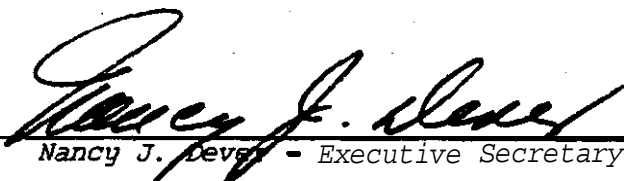
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: \_\_\_\_\_

  
Nancy J. Levey - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October, 1983.