NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25316

THIRD DIVISION

Docket Number MS-25397

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (David Lawrence
(Norfolk and Western Railway Company
(Lake Region)

STATEMENT OF CLAIM:

"Whether Petitioner-employe was responsible for an emergency situation which resulted in a one (1) week absence.

Petitioner-employee was charged with 'habitual and chronic absenteeism/ tardiness since April 22, 1981. The most recent date being September 22, 1981.'"

OPINION OF BOARD: This is a disciplinary action dispute in which Claimant David Lawrence had been issued a letter of dismissal, having been found guilty of "habitual and chronic absenteeism/tardiness since April 22, 1981, the most recent date being September 22, 1981". The Organization disputed the November 19, 1981, letter of dismissal initially arguing on January 8, 1982, that Claimant was neither afforded a *fair and impartial investigation nor was carrier able in its burden to sustain the charges".

The record in the instant case indicates that Carrier notified Claimant by letter dated September 29, 1981, which Claimant testified to having received. The formal investigation was held after postponement on November 6, 1981. Claimant was represented at the investigation and various objections were raised. It is the determination of this Board after a complete and thorough review of the proceedings that Claimant received due process and a fair and impartial investigation of the charges.

The Transcript of the investigation indicates that Claimant had failed to come to work for five days from September 14th through September 18th, 1981, without any prior notification to his Supervisor. When he did return. his Supervisor stated, "he said that he wanted his vacation. I explained to him that I couldn't let him have his vacation. After he had taken the days off=. Even further, when the Supervisor was asked if "after September 18th, did Mr. Lawrence miss any days on the Tie Gang?", the Supervisor reported by saying that "he missed a few more days after September 18th". The claimant argues that he failed to protect his assignment because his "car was broke down" and that he tried to call all week to request a vacation, even further, 'that the three days after that I missed, they gave me my vacation.. Clearly he did call to report his absence on the 14th, 15th and 17th and just as clearly the record indicates that of the five letters of warning, one was received September 16th and the four others were postmarked together on September 30th. But what is essential for the Board to determine is whether the charge against the Claimant was fully documented.

The Board finds that the Transcript of the investigation provides sufficient evidence of probative value, including Claimant's own testimony, to support Carrier's findings of guilt. Prior Awards clearly establish that this Board, in its appellate function, is not a trier of facts (see Third Division Awards 9230, 9322, 10113, 21612). Substantial evidence has been defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" (Consol. Ed. vs. Labor Bd. 305 U.S. 197, 229). A review of the record in this case firmly establishes that the Carrier has met the requirements of this Rule.

The only issue therefore, is whether the discipline assessed was reasonable. It has long been held by this Board that the employment relationship mandates that an employee regularly fulfill his job assignment, Even further, that employes have an unfailing responsibility to notify their Supervisors of any absence and in fact, to protect their assignment. Absenteeism has a major and detrimental effect on the Carrier and is a serious concern. Although the Claimant alleged mitigating circumstances for his admitted absence, it has long been held that this Board does not substitute its judgment for Carriers where the penalty is not arbitrary, capricious or unreasonable. This Board holds that Carrier action in the instant case complies with accepted Standards and therefore denies the claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the pasties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.