

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26243
Docket Number MW-26698

James R. Johnson, Referee

PARTIES TO DISPUTE: ((Brotherhood of Maintenance of Way **Employees**
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of B&B Carpenter **R. H. Johnson** for 'continued failure to protect your assignment on a full time basis' was arbitrary, capricious and without just and sufficient **cause** (System File C #13-84/D-2656-1).

(2) The claimant shall be reinstated with seniority and all rights unimpaired and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant was employed by the Carrier from October 25, 1982, until his discharge, following a Formal Investigation, on July 13, 1984. Claimant was discharged from the service for his "continued failure to protect (his) assignment on a full time basis."

The record reveals that Claimant was absent from work 22 times during the period from February 9, 1984, to June 28, 1984. **Moreover,** Claimant's record reveals that he was assessed a thirty day suspension in September, 1983, for being absent without permission; and, had been issued a formal warning on February 8, 1984, as a result of being absent 15 times during the three-month period between his **suspension** and that date.

The Organization contends that many of the Claimant's absences were **caused** by legitimate illness - a viral infection, and that fact is not disputed by the Carrier. The record is equally clear that a substantial number of Claimant's absences were not the result of illness. The Carrier contends that the issue here is not whether or not the absences were justified; rather, that they were excessive to the point that the Claimant's employment became a liability, rather than a "asset."

This issue has been addressed in many prior Awards, which have held that a Carrier may discharge **employees** who are excessively absent from service. For example, in Second Division Award 7348, it was held that:

"When a" employee is so consistently and habitually absent **over** a long period of time that his employment becomes a serious liability rather than a" asset, Carrier is entitled to terminate his services."

See also Second Division Awards 5049 and 10129, among others.

This Board agrees with the Carrier and prior Awards which hold that excessive absenteeism is adequate grounds for termination. **when an employee** accepts a position with an employer, certain responsibilities accrue to both. Fundamental of the **employee's** obligation is that he come to work regularly, and perform the tasks expected of him in an effective and efficient manner, and in compliance with the employer's rules. In return for this fundamental **commitment**, many rights and privileges accrue to the employee - including the benefits of the Labor Agreement.

When an employee occupies a position, and fails to report for work, much of the work goes undone. When he fails to report on a regular basis, the employer cannot operate its business. Even the best worker is of no use if he does not come to work. There is nothing in the Agreement or the law of Labor Relations, which requires an employer to permit an employee to occupy a position which he lacks the desire, fitness or ability to perform.

The Claimant had less than two years' service with the Carrier, and had demonstrated, repeatedly, that it could not depend upon him to protect his assignment. He was warned, suspended, and, finally, discharged for his poor attendance. This Board can find no reason to disturb the action of the Carrier in this case.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and 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 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 27th day of February 1987.