

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26265
Docket Number MW-26468

Edward L. Suntrup, Referee'

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

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

(1) The twenty (20) days' suspension imposed upon Repairman G. L. Allbritain for 'failure to report for duty . . . on 11/30/83 and reporting for duty after starting time on 11/18/83 which . . . constitutes excessive absenteeism' was arbitrary, capricious and without just and sufficient cause (System Docket CR-781-D).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: On December 13, 1983, the Claimant was advised to attend an Investigation to determine facts and place responsibility, if any, in connection with his alleged failure to report for duty on November 30, 1983, and for reporting for duty late on November 18, 1983, at the Canton Maintenance of Way Shop, Canton, Ohio. The notice also stated that the Investigation would be held "...in light of (the Claimant's) previous attendance record..." which included failures to report for duty, late starts and/or early quits on some fifteen (15) other dates in 1983 prior to November 18, 1983. After the Investigation was held on December 21, 1983, the Claimant was advised on January 4, 1984, that he was being assessed a twenty (20) day suspension. During the appeal on property the Carrier took note of testimony in the Transcript which showed that there was insufficient evidence to warrant conclusion that the Claimant was guilty of reporting late for duty on November 18, 1983. An Equipment Engineer had testified that he told the Claimant, when he called in late on that day, that his "...reasons for coming in late would probably be a valid reason. . . ." It was the position of the Organization that the Claimant had not, therefore, been found guilty on both counts for which he was charged. By correspondence to the Organization's District Chairman which is dated April 16, 1983, the Carrier advised the Organization that in view of its appeal it was reducing the suspension to fifteen (15) days.

A review of the record shows that the Claimant failed to report for duty on November 30, 1983. On merits the Claimant is guilty of this charge. The record also establishes that the Claimant had a prior record of absences, late starts and early quits in 1983 which could reasonably be construed as a pattern of absenteeism. On merits the instant Claim cannot be sustained. The only issue to be resolved by this Board is whether the discipline assessed by the Carrier was arbitrary or capricious. The Board has ruled on numerous occasions that an employee's past record may be taken into consideration when assessing the quantum of discipline (Second Division Awards 5790, 6632; Third

Division Awards 21043, 22320). The Claimant's past disciplinary record is not good. He had been disciplined three times for unauthorized absences or excessive absenteeism prior to November of 1983. Since such is the case the fifteen (15) day suspension levied by the Carrier was not unreasonable.

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

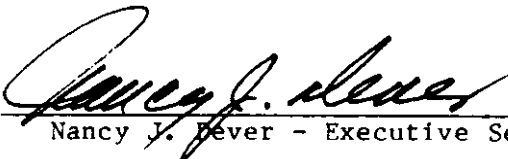
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of March 1987.