NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26296

THIRD DIVISION Docket Number MS-26567

Peter R. Meyers, Referee

PARTIES TO DISPUTE (Dennis Quinlivan
(Port Authority Trans-Hudson Corporation

STATEMENT OF CLAIM:

"That the carrier's decision to impose upon me a suspension without pay which commenced July 30, 1984 and extended continuously to and including November 16, 1984 for charges of violating rules 7 and 26 of the PATH Book of Rules with regard to abuse of sick leave was unwarranted.

It is my position that the carrier failed to recognize any of the evidence provided at the hearings of January 31, 1984 and May 16, 1984 by my union representative in my behalf which included a previous award on PATH by the NRAB for a similar case.

I am hereby appealing the PATH decision, and am seeking reimbursement of all pay lost due to suspension beginning July 30, 1984 ending November 17. 1984."

OPINION OF BOARD: On December 29, 1983, Carrier notified Claimant to appear at a Hearing on charges that he violated Rules 7 and 26 of Carrier's Rule Book when Claimant was absent from work due to a reported illness on November 28 - December 1, 1983. Rule 7 provides, in part, that "[t]o enter or remain in the service, employees must be of good character and must not commit an insubordinate, dishonest, immoral, illegal or vicious act." Rule 29 states:

> "Employees must maintain a satisfactory attendance record. If disabled due to accident or illness, or if unavoidably delayed, they must report by telephone to the person designated in their Division thst they will be late or unable to cover their assignment and the reason therefore. This must be done in time to permit PATH to fill their position if necessary. Unexplained absence, excessive absenteeism, Lateness or making a false report of injury or illness will be cause for disciplinary action. Employees returning f rom periods of absence must advise their supervisor sufficiently in advance to prevent their vacancy from being filled by another employee."

As a result of the Hearing, Claimant was suspended from service for ninety (90) days. Claimant thereafter filed this Claim on his own behalf, challenging the suspension.

Claimant argues that Carrier did not provide any evidence that Claimant was guilty of violating the cited Rules. Carrier presented only the testimony of its private investigator, who admitted he was not qualified to determine whether Claimant was sick while absent from duty. Moreover, because he received no sick pay during his absence from duty, Carrier had no vested interest during Claimant's absence. Claimant contends that the assessed discipline was unusual and excessive under the circumstances.

Claimant points out that he was found guilty of violating the cited Rules due to his alleged abuse of sick leave. Claimant argues that the cited Rules do not mention abuse of sick leave. Claimant thus contends that the charges were not substantiated. Claimant therefore asserts that the Claim should be sustained.

Carrier argues that Claimant did not dispute that he was seen leaving his home and driving to various stores during his absence from duty. Carrier asserts that this Board never has found these actions to be consistent with incapacity due to influenza. Carrier thus contends that there is sufficient evidence to support the charges, and the assessed discipline erred, if at all, only on the side of leniency. Carrier therefore asserts that the Claim should be denied.

This Board has reviewed the evidence and testimony in this case, and we find that although there may be some reason to doubt the severity of the illness from which the Claimant was suffering, the action taken by the Carrier in assessing the Claimant a 90-day suspension was clearly excessive and unreasonable. A written warning notice would have been sufficient. Claimant reported off from duty because of sickness, and Carrier has presented no evidence that Claimant was not sick on the days in question. Although Carrier has presented some evidence that Claimant left his home on several occasions during the time he was off, for a total of three and one-half hours, there is no evidence in the record rebutting Claimant's evidence that he had the flu on the days in question. He may not have been as sick as he claimed, but 90 days off for his actions in this case is entirely excessive. Therefore, the 90-day suspension shall be reduced to a reprimand regarding Claimant's actions on November 28 through December 1, 1983. The previous 20-day deferred suspension, which was activated as a result of this discipline, shall stand.

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 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 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1987.