NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26449
THIRD DIVISION Docket Number MW-26463

Herbert L. Marx, Jr. Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
(Consolidated Rail Corporation

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

(1) The fifteen (15) days of suspension imposed upon Welder J. L. Mitchell for alleged 'excessive absenteeism' was without just and sufficient cause, on the basis of unproven charges and in violation of the Agreement (System Docket CR-779-D).

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

OPINION OF BOARD: Claimant was subject to a investigative hearing on the following charge:

> "Failure to report for duty at Canton MW shop, Canton, Ohio on November 30, 1983, and reporting for duty after starting time on November 23, 1983 and November 28, 1983, which in light of your previous attendance record (absent August 15, 16, 17, 1983; November 16, 1983; late start August 1, 9, 1983; September 2, 28, 1983, October 17, 26, 1983, November 11, 1983; early quit July 22, 1983) constitutes excessive absenteeism."

Claimant had previously received counseling and a disciplinary suspension concerning his attendance.

There is no dispute as to the one absence of claimed illness and two tardinesses which led to the investigative hearing. The Carrier included in the charge, however, his record of unsatisfactory attendance in the previous five months, with the allegation that the record as a whole constituted "excessive absenteeism.-

While individual absences or latenesses must be considered under the particular applicable circumstances, the review of a" employee's attendance patter" in general is entirely proper. That such record may include some failures to report as scheduled for legitimate reasons does not affect the propriety of such review. In this instance, the Claimant received (as finally adjusted) a 15-day disciplinary suspension, which was progressive discipline following previous attempts to advise the Claimant of his unsatisfactory level of attendance. The Board finds no basis to disturb the Carrier's determination that the three latest instances in the final week of November, 1983, were the culmination of a pattern of "excessive absenteeism."

The Organization's protest that the Claimant was not advised in timely fashion concerning **the results** of the investigation was apparently made on a misunderstanding. While the hearing was originally scheduled for January 13, 1984, the record indicates that it was postponed by mutual agreement to January 19, 1984 -- so that the notice of discipline dated February 3 and received February 7 was indeed timely and within the required 20 days.

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 Agreement was not violated.

A WA R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

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