

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26576
Docket Number MW-27170

Elmer F. Thias, Referee

(Brotherhood of Maintenance of Way Employees

PARTIES TO DISPUTE: (

(Soo Line Railroad Company (formerly Chicago, Milwaukee,
St. Paul and Pacific Railroad Company)

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

(1) The ten (10) days of suspension imposed upon Section Laborer J. A. Davis for alleged 'excessive number of unexcused absences' on July 27, August 31, November 27, December 14, 1984 and January 11, 1985 was unjust, unreasonable and unwarranted (System File C #18-85/D-2684).

(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: The Claimant had been employed by the Carrier for approximately eight and one-half years when the incident giving rise to this dispute occurred. He held the position of Section Laborer. We would understand that no prior discipline appears on his record. Under date of June 18, 1984, the Roadmaster having jurisdiction directed a letter to the Claimant and apparently other **employees**, in which he complained of too many days of absence and all of that unexcused. His last one sentence paragraph stated the following:

"If this unexcused absenteeism continues further, disciplinary action will be taken."

In the seven-month period following the written warning given to the Claimant by the Roadmaster, the Claimant incurred absences as follows:

7-27-84	3 hours	extended week-end
8-31-84	3 hours	doctor appointment
12-14-84	3 hours	eye doctor appointment
1-11-85	4 hours	extended week-end
11-27-84	8 hours	sick

As a result of the absences indicated above, the Roadmaster notified the Claimant under date of January 16, 1985, that the Claimant was suspended for 10 working days for "excessive unexcused absences." The Organization has contested the discipline and following Hearing and appeals on the property, the dispute is now properly before this Board.

We view the question of the Claimant's unexcused absences as being excessive, to be superfluous. The Carrier treats with that question but superficially while the Organization leaves the record to speak for itself. A Hearing was held on February 4, 1985, and all of the testimony developed was directed to whether the Claimant's absences were or were not excusable. There is nothing of an evidential nature in the record upon which an appropriate determination could be made of whether the absences, excused or unexcused, were excessive and we do not do so. Nevertheless, the Carrier has the burden of proof of all elements of the offense for which the Claimant was **disciplined** and it has not proven the Claimant's unexcused absences to be excessive. Accordingly, we direct that the term "excessive" be cleared from the offense contained on his record.

The dispute between the parties concerns the issue of whether the five absences listed above were unexcused. The Carrier maintains these absences were not excused despite the fact the Claimant did receive permission to be absent from his immediate Supervisor in each instance. Further, on the occasion of his full day's absence, he notified his Foreman as well as telephoned the Roadmaster's office and notified the secretary there. In the case of the early quits, it appears that the immediate Supervisors of the Claimant notified the Roadmaster. The Roadmaster held essentially to the position that he must personally approve an absence, but approval could be withheld until after the Claimant returned from that absence. Yet, the Roadmaster had full knowledge that the Claimant was absent in each instance by permission of his immediate Supervisor.

During cross-examination of the Roadmaster at the Hearing by the Claimant's representative, the Conducting Officer interjected and explained it was the railroad who determines whether an absence is unexcused or excused; it was not the Roadmaster or any individual. There are other examples in the record of the confusing and ambivalent procedure being followed and the rather whimsical manner in which it **was** administered.

On the other hand, we do not perceive the Claimant to be a wholly innocent victim of procedure or its application. The Claimant had received a written warning of continuation of unexcused absences. Other employees were issued warnings. The Roadmaster held a meeting with the employees of the Terminal on December 12, 1984, where he emphasized the need to improve attendance and addressed specific examples. After receipt of the written warning, the Claimant obtained permission for four early quits with two of those taking place after the meeting held on December 12, 1984. In each instance in which the Claimant obtained early leave, the only reason he gave for that leave was "personal business."

When leave is requested for "personal business," those in authority are given no realistic opportunity to evaluate the justification or need for the leave requested. They are unable to properly weigh the requirements of the **employee** with the need for his service. With the possible exception of the doctor appointment on August 31, 1984, his three and four hour absences do not appear to be of a particularly personal nature and no early leave involved business in the usual **sense** of that term.

In reaching our decision in this dispute, we do not decide whether or not the Claimant's absences were genuinely motivated nor do we decide whether his absences are entitled to be excused or unexcused. That is not the real issue.. Assuming the Claimant's requests for early leave were made with the best intentions, the fact remains that the results produced evaded rather than conformed to policy made sufficiently clear by the Roadmaster. Consequently, the Claimant is not free of culpability.

In prior Awards, we have indicated regular attendance is both necessary and expected. We say that here. The Carrier provides a necessary service to its patrons and sometimes that service is vital to the nation. Presence, cooperation, candor and more is required of management, supervision and employees. In the same vein, discipline is a serious matter, particularly in the railroad industry where so many devote their working careers to the industry. Where discipline is imposed for cause, after full and fair development of relevant evidence and impartial consideration thereof, the discipline usually produces a constructive result. If evidence not be wholly developed or partially considered, an opposite result can be expected.

Upon due review and consideration of the record, it is our conclusion that some discipline is warranted but a ten-working day suspension is excessive. It is our view that no more than a four-working day suspension is justified and we direct that the Claimant be compensated for such wage loss as may exceed that sanction.

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 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. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1987.