

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The ten (10) calendar days suspension imposed upon Trackman J. E. Armagost for alleged 'absence without permission on July 23, 1984 ... which in light of your previous attendance record ... constitutes excessive absenteeism' was arbitrary, capricious, unwarranted and an abuse of discretion by the Carrier (System Docket CR-1097D).

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

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The basic facts in this case are set forth as follows: Based on an investigation held on August 10, 1984, Claimant was assessed a ten (10) day suspension for being absent from his assignment on July 23, 1984, without permission and for failure to report for duty on this same date. Said suspension was predicated upon Carrier's studied determination that his absence was a serious disciplinary infraction and a continuous manifestation of recidivist attendance behavior. He had previously been assessed a letter of reprimand in 1982 and letters of warning regarding absenteeism dated October 1, 1983, and May 11, 1984, respectively.

In response to this action, the Organization raised both procedural and substantive objections and cited various authorities to affirm its position. Specifically, it asserted that Carrier failed to define precisely what constituted excessive absenteeism and also pointed out that Carrier observed a different attendance policy at the Canton M/W Repair Shop. In effect, it maintained that had Claimant worked at the Canton facility he would not have been disciplined.

Furthermore, on substantive grounds, the Organization argued that Claimant fully complied with the notification requirements of Rule 28 (a) since pursuant to modified supervisory instructions he called the Altoona office and apprised the answering service of his intention to be absent on July 23, 1984. The call was allegedly made at 6:45 a.m. In addition, the Organization noted that the communication information transfer network established by Carrier at the Altoona situs rendered it impossible for a supervisor to grant appropriate absence permission, since there was no authorized person available to make this decision. On this point, it contended that Claimant was being unfairly disciplined for complying with his supervisor's instructions.

Carrier asserted that Claimant was accorded a hearing that singularly focused on his unauthorized absence on July 23, 1984, and accordingly, was provided ample opportunity to explain his actions. It maintained that he readily admitted at the investigation that he was absent without supervisory permission and this admission on its face was a clear indication that he was impermissibly absent. It also contended there was no record of his calling in on the morning of July 23, 1984, and observed by extension that simply providing notification, does not by itself constitute authorized permission. In effect, it maintained that in view of his past disciplinary record and his explicit testimony at the investigation, it was not unreasonable or an abuse of managerial discretion to assess the instant ten (10) days suspension.

In considering the procedural questions raised in this dispute, the Board concurs with Carrier's position that Claimant was accorded a fair trial consistent with acceptable due process standards. The purpose of the investigation was clearly spelled out in the notice of investigation and Claimant was under no illusion or cloud of ambiguity as to the central focus of the inquiry. The latter introduction of his past disciplinary record into the investigative record was not improper, since it established that he had been minimally disciplined in the past for a similar infraction and hence was on notice to comply with the pertinent attendance requirements. It was, to be sure, not an emulative model of investigation, but the record transcript does not reveal that Claimant was prejudiced by the trial officer's investigative methodology or course of conduct.

As to the substantive issue of culpability, we must agree with Carrier that Claimant was not absent with official authorization and in a technical sense was remiss by his failure to obtain permission. On the other hand, the record shows that Claimant was instructed to call the telephone answering service at Altoona to notify supervision of his intended absence,

but there is a conflict as to whether in fact, he did so. Claimant testified that he made this call at 6:45 a.m. on July 23, 1984, which was contested by Carrier. The Assistant Supervisor of Production testified that supervision checked with the timekeeper, who in turn said there was no call. This point was not further pursued by the Organization.

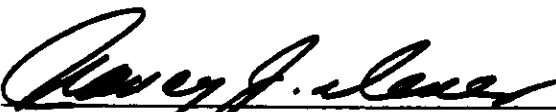
Conversely, the record indicates that Claimant observed the Altoona absence notification procedures, as evidenced by his prior notifications on May 11, 1984, and July 9, 1984. He was given a Letter of Reprimand for absent without permission on May 11, 1984, but was granted permission to be absent on July 9, 1984. This distinction would certainly warrant the conclusion that he needed permission to be absent. Consequently, it would have required some effort on his part on July 23, 1984, to secure this permission. Conceding that he called on July 23, 1984, Claimant was on notice to obtain permission for absence. The telephone answering system might have contributed to his dilemma, but he was required to obtain permission. However, on balance and given these circumstances, the Board does not believe that a ten (10) days suspension was warranted and it is accordingly reduced to three (3) days. Claimant is to be made whole for the time lost in accordance with Section 4 of Rule 27. In essence, he shall be paid the difference between the amount he would have had he not been disciplined and the amount he earned or received during the discipline period.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1988.