

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(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 five (5) days of suspension imposed upon Repairman R. D. Smith for failure to report for duty at his assigned starting time on March 30, 1984 was unwarranted and in violation of the Agreement (System Docket CR-1035D).

(2) The claimant's record shall be cleared of the charge 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 employee or employees involved in this dispute are respectively carrier and employees 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.

On April 9, 1984, the Claimant was notified by the Carrier to attend a Hearing to consider the charge of excessive absenteeism. The Hearing was held on April 19, 1984. Following the Hearing the Claimant was notified that he had been found guilty and was assessed a five days' suspension.

The facts of this record are not in dispute. Claimant had a number of previous late starts. On September 29, 1983, Claimant was counseled with respect to his late starts as a warning to correct his behavior. He was aware of the Canton Shops Policy with regard to late starts and absenteeism. On March 9, 15, and 30, 1984, the Carrier marked Claimant late. Claimant admits in the record that he was late on all three occasions. He had not corrected his behavior. Claimant is therefore guilty as charged.

After finding that there is sufficient evidence to support the Carrier's determination of guilt the only issue remaining before this Board is the assessed discipline. Carrier has a right to establish an absenteeism policy. It must however apply that policy justly and reasonably. Here, the


Claimant disputes that he was five minutes, rather than one minute late. Still, Claimant was late and therefore in violation of the Carrier's Canton Shop Policy. This Board has carefully reviewed past Awards and finds that in the instant circumstances, the imposed discipline was harsh. The Board reduces the discipline for this offence to three days of suspension (Third Division Awards 26268, 26234). Claimant is to be compensated for lost wages.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1988.