

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(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 D. Bassi for failure to report for duty on April 9, 1984 and leaving work before the end of your tour of duty on April 16, 1984 was unwarranted and in violation of the Agreement (System Docket CR-1037D).

(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 employes 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.

Claimant, a repairman at Carrier's Canton Maintenance Shop at Canton, Ohio, received a five day suspension following his failure to report for duty on April 9, 1984, and for leaving work early without permission on April 16, 1984.

A review of the record shows testimony by the Assistant Engineer to the effect that Claimant reported off on April 9, 1984, because his wife was sick and on April 16, 1984, had an early quit because of illness. The record further establishes that only a few weeks earlier, on March 26 and 27, 1984, Claimant reported off work. He requested that those days be considered vacation days, but the request was denied because he had exhausted his vacation day allowance for that year.

Claimant does not deny that he was absent or left early on the dates in question. Instead, he maintained that he had good reason not to report to work and to leave early, and he detailed incidents of car repairs and illnesses among family members. Since Claimant had legitimate reasons for his

absences, the Organization asserts, the imposition of discipline was improper and unwarranted.

This Board finds that the Organization's argument has been raised and rejected in innumerable decisions before the various Divisions of the National Railroad Adjustment Board. Many tribunals have held that excessive absenteeism, even for legitimate reasons and where notice is provided, need not be tolerated. See, PLB 2037, Award Number 67; PLB 2263, Award Number 37; SBA No. 910, Award Number 32. We note, too, that this Board has ruled on numerous occasions that one employee's past record or history of discipline may be taken into consideration when assessing the question of discipline. See, Third Division Awards 26265 and 26266. From the record here it appears that Claimant was counselled for excessive absenteeism on December 16, 23, 27, 1983; January 16 and 23, 1984. He was also counselled for excessive absenteeism on April 25, 1983. Under these circumstances, we find that the discipline assessed was appropriate and not an abuse of Carrier's discretion.

The Organization also asserted that the Canton Maintenance Way Shop absenteeism policy conflicted with Rule 39 and 41 of the schedule Agreement which state:

"Rule 39 - Mutual Agreement

Exceptions to any rule in this Agreement may be made only by agreement between the Senior Director-Labor Relations and the General Chairman.

Rule 41 - Effective Date and Changes

This Agreement, with its Appendices, is made in accordance with Section 504(d) of the Regional Rail Reorganization Act of 1973, as amended, and will be effective February 1, 1982.

If a revision is desired by either the Company or the Brotherhood, thirty (30) days notice in writing of the modification desired, shall be given in accordance with Section 6 of the Railway Labor Act, as amended."

We find the Organization's reliance upon the foregoing rules to be misplaced. The policy concerning employee absenteeism at Canton Maintenance Way Shop does not constitute an exception to any rule in the Agreement, nor does it constitute the unilateral revision of any provision or modification of the Agreement. Therefore, there is no basis for concluding that either of the foregoing rules has been violated.

As a final matter, we take note that the Organization advanced several additional arguments in its Submission which were never raised during the handling of this dispute on the property. The Board will not entertain argu-

ments first presented at this level. This well-established principle has been followed in many Awards, of which First Division Award 18897, Second Division Award 4296 and Third Division Award 5469 are merely representative examples.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Leever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1988.