

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

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

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

(1) The discipline imposed upon Trackman G. T. Rakocy, Jr. for alleged 'absenteeism on Tuesday, May 15, 1984' was unwarranted and on the basis of unproven charges (System Docket CR-1179D).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss, if any, 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 Trackman with eight years of service, was notified to attend a hearing on May 31, 1984, in connection with his absence from service on Tuesday, May 15, 1984. Following the investigation, Claimant was notified that he was disciplined by "Four (4) working days to be served upon next offense."

The record in the instant case discloses that on the date in question, Claimant failed to report for his regular assignment and did not so notify Carrier in advance of his starting time.

Claimant testified at hearing that he was indeed sick on May 15, 1984. A fellow co-worker corroborated Claimant's testimony, stating that when they awoke that morning, Claimant appeared to be ill with the flu. According to Claimant, he notified his Supervisor later that morning, at about 9:30 a.m., that he would be unable to report to work because of illness. Claimant's Supervisor denied that he had received notification from Claimant at any time that day concerning his absence.

The Carrier contends that the evidence adduced at the investigation fully established that Claimant was guilty of the charges against him. In taking into consideration Claimant's admission that he did not report for work or timely notify Carrier of his absence, as well as Claimant's prior discipline consisting of a letter of warning for absenteeism only two months earlier, Carrier maintains that the disciplinary action taken was warranted and justified.

The Organization takes the position that Claimant's discipline was unjust because Claimant complied with Rule 28(a) which states:

"Rule 28 - Absent Without Permission

(a) An employee unable to report for work for any reason must notify his supervisor as soon as possible."

In this case, the Organization argues that the credible evidence established that Claimant notified his Supervisors of the reasons for his failure to report for work, and therefore, he should not be penalized. The Organization further asserts that the Carrier has failed to meet its burden of proof; that the discipline herein was arbitrary and capricious; and that the decision rendered after the hearing was improperly rendered by the Superintendent, who was not present at hearing.

The Board finds, after careful review of the record evidence, that Carrier neither breached any relevant contract provisions nor acted in an arbitrary or unreasonable manner when it imposed discipline for Claimant's absence of May 15, 1984. Although the Organization appeals the determination primarily on grounds that Claimant was not at fault because he was ill and that Carrier abused its discretion because Claimant did at some point notify Carrier of his absence, the fact remains that Claimant concededly did not fulfill his obligation to protect his work assignment nor did he timely notify Carrier of his absence. We note, too, that there is conflicting evidence in the record as to whether or not Claimant did notify Carrier at all of his absence. Given our position as an appellate body, however, it is not our role to resolve credibility questions. Under these circumstances, this Board will not set aside Carrier's determination that Claimant's absence was unauthorized and deserving of discipline. We find that there is substantial evidence to support the claim of absenteeism, and therefore, we rule to deny the claim.

As a final matter, we must point out that the Organization's procedural objection, that the Superintendent who rendered the discipline was not present at the hearing, has not been considered since this is wholly new argument never before addressed on the property and therefore, inadmissible before the Board.

Form 1
Page 3


Award No. 27613
Docket No. MW-26837
88-3-85-3-600

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of November 1988.