

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27972
Docket No. CL-28277
89-3-88-3-44

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

PARTIES TO DISPUTE: (Transportation Communications International Union
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(The Atchison, Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization
(GL-10231) that:

Claim No. 1:

(a) Carrier violated the provisions of the current Clerks' Agreement at Fresno, California, when it wrongfully assessed the personal record of M. A. Rodriguez thirty (30) demerits, and

(b) Mr. M. A. Rodriguez shall now have the thirty (30) demerits removed from his personal record and all reference thereto removed from Claimant's personal record for the investigation held on October 6, 1986.

Claim No. 2:

(a) Carrier violated the rules of the current Clerks' Agreement at Fresno, California, on October 15, 1986, when it wrongfully removed Mr. M. A. Rodriguez from the service of the Carrier, and

(b) Mr. M. A. Rodriguez shall now be reinstated into service of the Carrier and all reference thereto removed from Claimant's personal record for the investigation held on October 15, 1986, and

(c) Mr. M. A. Rodriguez shall now be compensated for eight (8) hours' pay for each work day of Crew Clerk Position No. 6019 at the rate of \$103.44 per day (plus subsequent general wage increases and lump sum payments) commencing October 6, 1986, until he is properly reinstated into the service of the Carrier.

Claim No. 3:

(a) Carrier violated the rules of the current Clerks' Agreement at Fresno, California, on October 15, 1986, when it wrongfully removed Mr. M. A. Rodriguez from the service of the Carrier, and

(b) Mr. M. A. Rodriguez shall now be reinstated into service of the Carrier, and all reference thereto removed from Claimant's personal record for the investigation held on October 15, 1986, and

(c) Mr. M. A. Rodriguez shall now be compensated for eight (8) hours' pay for each work day of Crew Clerk Position No. 6019 at the rate of \$103.44 per day (plus subsequent general wage increases and lump sum payments) commencing October 6, 1986, until he is properly reinstated into service of the Carrier."

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.

This matter involves 3 separate Claims. Claim No. 1 reveals that on October 7, 1986, Claimant was assessed 30 demerits for excessive absence between May 30 and September 26, 1986. Claim No. 2 appeals a charge of being AWOL on all work days from September 29 until October 26, 1986, for which, in light of his overall record, he was removed from service on October 15, 1986. The October 15 letter of removal is also appealed under Claim 3 in that the second paragraph additionally removed Claimant for being in violation of Rule 31-H, i.e., receiving more than 60 demerits in a single year under the "Brown System."

The records reveals that in May 1986, Claimant was disciplined by receiving 20 demerits for excessive absenteeism. Claimant accepted these demerits and was counseled and cautioned to avoid further absence on penalty of additional disciplinary action. Nevertheless, between May 30 and September 26, 1986, he took 21 sick days. In addition, he missed 2 days for a death in the family and 3 days on personal business to attend court.

Of 76 available work days during this period, Claimant missed a total of 26, or 34%; 28% if the personal days other than sick time are isolated. Claimant's defense was that he was ill and under a doctor's care. He apparently had missed 22 work days prior to May 30, making a total of 48 for 1986 by September 13.

The Organization contends that because the Notice of Investigation specified only "absences during period of May 30, 1986 to September 13, 1986," and did not specify the exact dates, the notice is deficient. We agree that a notice must be precise enough to enable a Claimant to know precisely with what he is being charged and convey sufficient details so that he may adequately prepare a defense. Neither of these elements is lacking here.

The record reveals that Claimant called in when he was ill or needed personal time off. In testimony, he was cognizant of many of the individual dates of absence. The Hearing was postponed twice and Claimant had time to inquire as to any dates of which he may have been in doubt. No prejudicial error has been committed.

As to the assessment of 30 demerits for the 26 days of absence, the Board cannot say that this penalty is so clearly excessive as to require modification. The scope of our appellate jurisdiction is well established. We are to determine: (1) Whether Claimant received a fair and impartial investigation; (2) Whether substantial evidence supports Carrier's finding of culpability; and (3) Whether the penalty assessed is reasonable under all the circumstances, or is arbitrary, unreasonable or capricious. In making the latter determination, we do not substitute our judgement for that of the Carrier even in situations where we, had we the responsibility, might have decided differently. There must be genuine abuse of discretion to justify modification.

Here there is no such abuse of discretion. The Carrier has presented numerous Awards in support of the proposition that excessive absenteeism is grounds for disciplinary action. Even assuming that each allegation of Claimant's illness is true, "This Board has long held that there may come a time when an employer need no longer countenance excessive absenteeism on the part of an employee." (Third Division Awards 27156, 26187 and 27801.) Claimant's record justifies 30 demerits under the facts presented in Claim No. 1.

We turn our attention next to Claimant's removal for accumulating a total of 70 demerits by virtue of being assessed 20 on May 18, 1986, 20 additional demerits as of September 13, 1986, and the 30 demerits upheld under Claim No. 1, above. Under Claim No. 3 the issue is whether Claimant accumulated 60 or more demerits on the record. The Board has already found that the final 30, making a total of 70 here, were warranted. Rule 31-H subjects an employee to dismissal for the accumulation of 60 demerits. "The validity of the Brown system has been upheld many times, and this Board will uphold it here." (Third Division Award 26442)

It will be upheld in this case as well. For this reason the Board need not reach the merits of Claim No. 2.

A W A R D

Claims No. 1 and 3 are denied. Claim No. 2 is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest 
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1989.