

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

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(CSX Transportation, Inc.
(Chesapeake and Ohio Railway Company)

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

(1) The dismissal of Trackman C. H. Reed for absenteeism was improper and in violation of the Agreement [System File C-M-3763/12-21(87-512)].

(2) The April 1, 1987 Appendix 'D' letter shall be rescinded and Claimant Reed's record cleared of the charge leveled against him.

(3) Claimant Reed shall be reinstated to service with seniority, all rights and benefits unimpaired 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.

In the facts and circumstances of this case Claimant had a long and extensive record of absenteeism resulting in dismissal in 1982. Claimant was reinstated on a one year probation and returned to service January 20, 1986. As indicated in Carrier's letter of July 27, 1987:

"In investigating this matter we find that Mr. Reed began work on...February 9, 1987, and worked until February 23, 1987. At that time he said he wanted two days vacation. After he did not return following the two requested days, he was paid vacation for the remainder of that week. When he failed to report for work the following week, he was carried absent without permission because we did not know where he was and did not have a phone number for him. He was carried as absent without permission until he came to the office on March 30, 1987, and informed us that he was sick and did not know how long he would remain off work. He was absent without explanation from February 26, 1987 until March 30, 1987."

By letter of April 1, 1987, Claimant was dismissed for absenteeism. This dispute was thereafter handled on property without resolution.

It is the Carrier's position that the Appendix A, B and C letters are still active in Claimant's record due to his leniency reinstatement and therefore dismissal is covered by the Agreement. In addition the Carrier argues that Claimant's excessive absenteeism could no longer be tolerated.

It is the Organization's position that there is no mention in the reinstatement Agreement that Appendix A, B and C letters would remain in the Claimant's file. The Organization also points out that the July 25, 1977 Memorandum of Agreement which covers absenteeism and its December 21, 1978 Amendments have been violated by the Carrier's action as these letters were to be removed.

The Board has very carefully read the governing Agreements and finds that Carrier's action failed to comply therewith. There is nothing in the Carrier's leniency reinstatement to suggest, convey or state that Appendix B and C letters remain in effect. The probationary period of one year which would have resulted in immediate dismissal for absenteeism had passed. Given the December 21, 1978 Amendments, Claimant's Appendix B and C letters (issued in 1980 and 1982) would have been removed following the appropriate probationary periods. By Agreement between the parties progressive disciplinary steps would begin again.

The Board finds that the dismissal of Claimant was improper. We will not clear Claimant's record as requested by the Organization, but reduce the excessive penalty to the Agreement governed letter (Appendix B). We are constrained by this Agreement to the above action, but find Claimant's absenteeism and his woeful disregard for employment responsibilities to be of such intensity as to question his future employment. This Board must leave it to the parties to design Agreements to handle continued revolving progressions of absenteeism that stay one step ahead of dismissal - as in the instant case. We must however enforce the Agreement and are hereby reluctantly constrained to allow Claimant's return to service with seniority rights unimpaired and compensation for time lost beyond the Appendix B penalty.

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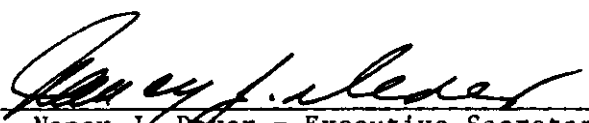
Award No. 28416
Docket No. MW-28384
90-3-88-3-163

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 25th day of May 1990.