

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29011
Docket No. TD-29470
91-3-90-3-493

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"#1 - 15 DAYS SUSPENSION - NEC-ATDA-SD-134D

Appeal of 15 days suspension assessed Power Director J. E. Meehan,
11/3/89

#2 - DISMISSAL - NEC-ATDA-SD-138D

Appeal of dismissal of Power Director J. E. Meehan, 4/6/90"

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 were given due notice of hearing thereon.

As discussed on the property during the appeals, the following facts are in evidence:

After returning to service as a Power Director on October 3, 1988, the Claimant was absent on thirteen days between then and December 5, 1988. At that time, the Claimant was issued a letter of warning for his lack of attendance. He was told his attendance would have to improve. By January 31, 1989, the Carrier felt his attendance was still not within acceptable standards and he was again formally warned that further absences would result in discipline.

The Claimant's absenteeism continued. As a result, he was assessed a 10 day deferred suspension on April 7, 1989. Following an appeal by the Organization, the discipline was reduced to a reprimand. From that point until October 18, 1989, the Claimant reported off duty on thirteen occasions for a total of forty days. He was issued a Notice of Investigation dated October 18, 1989, wherein he was charged with:

"Violation of Amtrak's Rules of Conduct, Rule "O", that portion that reads: 'Employees must report for duty at the designated time and place and must attend to their duties during assigned working hours. Employees must not be absent from their assigned duty . . .without the permission of their supervisor. . .'.

In that you failed to report to duty on June 13, 14, 21, July 1, 5, 15, 19, 25, 26, 29, August 1, 2, 20, 21, 22, 23, 26, 27, 28, 29, 30, September 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 19, 20, 23, 26, 27, October 4, 8 and 10, 1989. In consideration of your previous attendance record, the above absences constitute excessive absenteeism."

The Investigation was held on October 27, 1989.

By letter dated November 3, 1989, the Carrier advised the Claimant the evidence substantiated his guilt. According to the letter it also took into consideration his previous disciplinary record and issued a fifteen calendar day suspension.

The Carrier's decision was appealed by the Organization.

On March 5, 1990, the Claimant received another Notice of Investigation. He was directed to attend a formal Hearing on March 19, 1990, in connection with the charge:

"Violation of Amtrak's Rules of Conduct, Rule "O", that portion that reads, 'Employees must report for duty at the designated time and place and must attend to their duties during assigned working hours. Employees must not be absent from their assigned duty...'

Specification: In that you failed to report for duty on January 10, 13, 14, 16, 17, 20, 22, 23, 24, 27 and 28, 1990; also February 10, 17, 24 and 28, 1990. In consideration of your previous attendance record, the above absences constitute excessive absenteeism."

The Hearing was postponed until March 30, 1990. On April 6, 1990, the Claimant was notified of the Carrier's decision to dismiss him based on excessive absenteeism.

This decision was also appealed.

The Organization argues that absences due to bona fide illnesses should not be considered excessive absenteeism. Besides, Rule 0 controls employees who are scheduled to report to work and the performance of their duties during their scheduled work hours. The Claimant reported off duty on each occurrence of absence and he reported to the appropriate person. On none of these instances was his absence challenged.

In addition, the Organization argues that Claimant was never forewarned that absences due to bona fide illnesses were violations of Rule 0. He has never been disciplined for tardiness. He has always reported to his designated area of assignment, he does his work as directed and he does not leave his assignment. Therefore, he is not in violation of Rule 0.

The Carrier contends the evidence supports the discipline issued to the Claimant and that he was excessively absent. He was given numerous opportunities to improve his attendance, but he failed to respond. The Claimant was absent a total of 81 days in 1988, 65 days in 1989, and during the first three months of 1990, he was absent on 9 occasions for a total of twenty days. Many of these absences were in conjunction with the Claimant's rest days, which demonstrates a pattern of sick leave abuse.

The Carrier further argues it is well established in labor relations that employers have every right to expect reasonable attendance from their employees. Excessive absenteeism, whether for legitimate illnesses or for other reasons, causes an extra burden on other employees, as well as a disruption of productivity. If an employer is to run its business in an orderly, efficient and profitable manner, its employees must meet their employment obligations, one of which is to attend work regularly.

In the instant case, the Carrier points out that the Claimant has demonstrated either an unwillingness or an inability to improve his irregular attendance. In 1989 alone, he had an absentee rate of 40% and was heading for similar statistics during the first two months of 1990, when he was absent on 15 out of a possible 43 work-days, a 35% absentee rate.

We conclude that even though the Claimant complied with the procedures for calling in to report his absences, this fact does not negate the Claimant's excessive absenteeism. Furthermore, despite the Organization's urging, the fact that there is a sick leave benefit in place, does not give an employee an automatic right to utilize every day he has available under such a program regardless of the circumstances. The sick leave benefit is designed to provide employees with some financial protection; it is not meant to be a guideline to determine whether or not an employee is excessively absent. Likewise, it is not relevant that the Claimant was paid for some of the days on which he was absent.

Everyone recognizes there are long term illnesses or disabilities which require lengthy absences. In those circumstances, employees should be given the benefit of the doubt. However, when an employee attends work sporadically based on a myriad of reasons, he diminishes his value as an employee. The employer is justified in removing him from its employment and replacing him with a more productive employee.

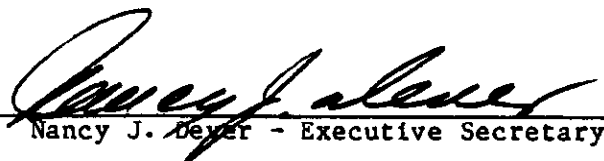
This Board believes the Carrier appropriately counseled the Claimant and gave him every opportunity to improve his attendance. It was to no avail. The fifteen (15) day suspension and the eventual dismissal were justified.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this, 24th day of September 1991.