

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 36559  
Docket No. MW-33226  
03-3-96-3-690**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn 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 discipline [five (5) day suspension] imposed upon Repairman M. A. Hester for failure to report for duty on May 18, 19, June 1 and 2, 1995, which constitutes excessive absenteeism, was arbitrary, capricious and without just cause (System Docket MW-3922D).**
- 2. As a consequence of the violation referred to in Part (1) above, the Claimant shall receive the remedy prescribed by the parties in Rule 27, Section 4.”**

**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 employee 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.**

**At the relevant time, the Claimant was a Repairman with 19 years of service and held seniority in the Carrier's Maintenance of Way Track Department. The Claimant was assigned to the Maintenance of Way Shop at Canton, Ohio.**

After the Claimant was absent from his position on May 18, 19, June 1 and 2, 1995, Hearing was held and the Claimant received a five-day suspension.

Substantial evidence supports the Carrier's determination that the Claimant engaged in misconduct. The Carrier's Absenteeism Policy states that four occasions of absence within a six month period places an employee in violation of that policy. The Claimant's record shows that in addition to the May 18, 19, June 1 and 2, 1995 absences, the Claimant was absent on December 28, 1994 and April 24, 1995. The Claimant acknowledged that he was aware that accumulating four instances of absence between December 28, 1994 and June 2, 1995 was in violation of the Absenteeism Policy. As a result of the absences on these occasions, the Carrier has shown that the Claimant violated the Absenteeism Policy.

Under the circumstances, a five-day suspension is not arbitrary. The Claimant has a lengthy discipline record. Most recently prior to this disciplinary action, the Claimant received a written reprimand on December 19, 1994 for excessive absenteeism. The Claimant was also counseled in December 1993 about his absences; was given a copy of the Absenteeism Policy; and was warned that future violations may result in discipline. Under the circumstances, a five day suspension in this case falls within the realm of reasonable discipline for the demonstrated misconduct.

The claim shall therefore be denied.

**AWARD**

Claim denied.

**ORDER**

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

Dated at Chicago, Illinois, this 16th day of June 2003.