

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24252  
Docket Number MW-24284

Robert W. McAllister, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes  
{ Consolidated Rail Corporation (former Penn Central  
{ Transportation Company)

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

(1) The dismissal of James Leak, Jr. for 'Unauthorized absenteeism on the following dates: November 28, 29, 30, 1979' was excessive and without just and sufficient cause (System Docket No. 534).

(2) James Leak, Jr. shall be reinstated with seniority vacation and all other rights unimpaired and he shall be compensated in compliance with Agreement Rule 6-A-1(d)."

OPINION OF BOARD: James Leak, Jr., the Claimant, was dismissed from service for unauthorized absenteeism. The Claimant was employed as a truck driver with seniority since January 22, 1976.

The absences which caused Claimant to be so charged occurred on November 28, 29, and 30, 1979. The Organization asserts the transcript supports a finding Claimant notified the Carrier of his reasons prior to the absences. The Organization argues in the alternative that, assuming arguendo the Claimant was absent from duty without proper authority, the supreme penalty of discharge is excessive and not commensurate with the offense.

This Board, after reviewing the transcript, concludes the Claimant did not receive permission to be absent on the three days involved. Despite claims of discrimination and harassment, we agree with the Carrier's conclusion and find absolutely no evidence of such arbitrary conduct other than Claimant's assertions made at the trial. By Claimant's own admission, he acknowledged his absences, but provided no evidence of having secured authorization for the absences.

Having so found, this Board now addresses the Organization position concerning the degree of discipline. We find the Carrier's consideration of Claimant's lengthy past record in determining the extent of discipline to be proper and necessary. The evidence adduced sustains the Carrier's findings and justifies the imposition of discipline. The consideration of prior corrective action is, as stated above, an essential step in the use of progressive discipline. Considering, the Carrier's expectation that employees work on a regular basis, the Board finds the Carrier did not act in an unreasonable manner.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By

  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 23rd day of March 1983.

