

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24650
Docket Number MW-24704

Robert W. McAllister, Referee

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

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

(1) The dismissal of Trackman G. E. Snead, Jr. for "Unauthorized absenteeism on January 18, 21, 22 and 23, 1980" was without just and sufficient cause (System Docket 544).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: G. E. Snead, Jr., a Trackman, with approximately four and one-half years service was headquartered at Carrier's Morrisville, Pennsylvania, facility. On January 23, 1980, Claimant was advised to appear at a hearing concerning his charged unauthorized absenteeism on January 18, 21, 22 and 23, 1980. The Claimant did not appear, and the trial continued after a delay of approximately forty-five minutes without the Claimant's presence. Following the hearing, Claimant was notified of his dismissal for unauthorized absenteeism.

The Organization contends the Claimant was denied due process by the Carrier's refusal to grant a postponement. It is also argued that the Carrier failed to take into consideration proof submitted in the form of a health certificate at the appeal hearing. The Organization asserts this certificate clearly supports the Claimant's defense that he was absent because of illness and the Carrier's assessment of discipline is clearly unwarranted.

The record discloses the parties herein have previously agreed to procedures for dealing with excessive or unauthorized absenteeism. (See Awards 23974, 23995, 24160) The agreement provides, in part, that Maintenance of Way Employees found guilty of unauthorized absence from work three (3) times within a twelve month period are subject to dismissal. It is uncontroverted that, if this Board upholds the Carrier's position with respect to the four absences in January, 1980, they, coupled with the Claimant's prior record of absence, would total three instances within a twelve month period.

Our examination of the transcript indicates the Carrier introduced credible evidence that the Claimant received personal service notifying him of the trial date. It is uncontroverted that the trial was delayed approximately forty-five minutes while the parties waited for the appearance of the Claimant. There is absolutely no evidence the Claimant requested a postponement prior to the trial. His absence is due entirely to his own actions and cannot convert a fair and impartial hearing into a denial of due process.

Employees are obligated to report for duty with a high degree of regularity. Herein, this Board finds the evidence produced at the hearing sufficient to support the Carrier's charge the Claimant was absent without authorization on January 18, 21, 22, 23, 1980. We also find the hearing was fairly conducted. In view of the Claimant's prior disciplinary record for absenteeism and the agreed upon progressive discipline procedure for such offenses, this Board upholds the Carrier's dismissal of the Claimant.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Second Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1984