

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25893
Docket Number MW-25845

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
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(National Railroad Passenger Corporation

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

(1) The dismissal of Trackman L. Sadler for alleged excessive absenteeism was without just and sufficient cause and on the basis of unproven charges (System File NEC-BMWE-SD-586D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, and the charge leveled against him shall be cleared from his record and he shall be compensated for all wage loss suffered."

OPINION OF BOARD: The Claimant began service with the Carrier on July 23, 1976. At the time of the disciplinary action appealed in this case, Claimant was assigned as a Trackman in the Penn Coach Yard, Philadelphia, PA.

By a notice dated February 7, 1983, Claimant was advised to attend a Trial. The notice stated in part:

"This is a notice for you to attend (a) Trial. You may, if you desire, arrange to be accompanied by a representative as provided in applicable scheduled agreement, without expense to the company.

This notice is issued in connection with the CHARGE, Excessive absenteeism; in that you were absent from work on the following dates: January 10, 14, 19, 21, and 31, all of 1983.

/s/Peter Adamovich"

The Trial was held on February 15, 1983 in the 30th Street Station Hearing Room, Philadelphia, PA. By a letter dated February 28, 1983, the Claimant was informed that as a result of the evidence adduced at the trial, the Carrier's disciplinary determination was dismissal in all capacities.

The Organization contends that Claimant's dismissal for excessive absenteeism was without just and sufficient cause and based on unproven charges.

We find substantial evidence in the record supports the Carrier's finding of excessive absenteeism and the resulting discipline in this case. A review of the trial transcript reveals that Claimant's Supervisor testified that Claimant was absent from work on the days set forth in the charge, namely, January 10, 14, 19, 21 and 31, 1983. This testimony is corroborated by the Engineering Department's Daily Work Reports for these same dates which

show that Claimant was not present at work. Furthermore, Claimant himself testified that he was absent from duty on January 10, 19, 21 and 31, 1983. Accordingly, far from being an "unproven charge", the record contains substantial evidence supporting the Carrier's determination that the Claimant was absent from work on January 10, 14, 19, 21 and 31, 1983.

Although the record clearly establishes five absences within a three-week period, the Organization contends that the discipline administered to the Claimant in this case was unjustified for two reasons. First, the Organization maintains that the absences were excusable because they were caused by a chronic ailment of which Claimant's Supervisor was well aware. Second, the Organization asserts that Claimant telephoned his Supervisor's office to mark off sick for each of the absences set forth in the charge.

We find neither of these contentions are supported by the record and thus do not view the discipline administered in this case as unjustified or excessive. Only the Claimant's testimony supports the assertion that the five absences were all caused by a chronic illness. The transcript indicates that Claimant's Supervisor was asked specifically whether Claimant told him that the five absences were all due to one particular ailment. The Supervisor responded, "(to) the best of my knowledge, no." In addition, despite the Claimant's testimony that he could document his illness, the record is devoid of any documentation or medical evidence indicating that the five absences in January, 1983 may be attributed to a chronic condition. Indeed Claimant had an appeal hearing on this case and did not present any documentation of illness.

Similarly, the record does not support the contention that Claimant telephoned to mark off sick for each of the absences set forth in the Carrier's charge. The Claimant's Supervisor testified that he could recall the Claimant telephoning on only two of the days set forth in the charge. We find it significant that the call off logs included in the record corroborate the Supervisor's testimony and indicate that the Claimant telephoned on just two of the days in question, January 10 and 19, 1983. Contrary to the Claimant's testimony, however, the logs do not show that the Claimant called in on January 14, 21 or 31, 1983. Accordingly, on the basis of the record before us, we reject the assertions that the absences may be excused or their impact mitigated. We find that the Carrier has met its burden of proof. We are satisfied that the record contains substantial evidence which supports the Carrier's determination that Claimant was responsible for excessive absenteeism. Excessive absenteeism is a serious offense. A Carrier must be able to rely on its employees and expect reasonable attendance. In assessing the quantum of discipline for a proven offense, the Carrier may consider the employee's prior discipline record. This record reveals a letter of Warning regarding absenteeism and two suspensions concerning excessive absenteeism. Accordingly, given the record in this case we find the discipline of dismissal neither arbitrary, capricious, nor excessive. The claim is denied.

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 Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1986.