

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman 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 twenty (20) days suspension imposed upon Repairman L. L. Mackey for failure to report at his assigned starting time on March 14, 1984 was unwarranted and in violation of the Agreement (System Docket CR-1036D).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered."

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 waived right of appearance at hearing thereon.

After postponement a Hearing was held on April 11, 1984, to consider the alleged failure of Claimant to report for duty at the assigned time, which with his past record constituted excessive absenteeism. Claimant was charged with:

"Failure to report for duty at your assigned starting time at Canton MW Shop, Canton, Ohio on March 14, 1984, which in light of your previous attendance record (Absent January 23, 1984, February 2, 1984, February 10, 1984; Late starts February 24, 1984 and February 27, 1984; Early quits January 9, 1984 and January 19, 1984) constitutes excessive absenteeism."

Following the Hearing, Claimant was found guilty as charged and assessed discipline of twenty (20) days' suspension.

Carrier notes that the Canton MW Shop has a clearly understood absenteeism policy. If an employee has any combination of late starts, early quits or absents which total three in any thirty days the employee may have a written warning and discussion. This result had previously occurred with the Claimant. Future combinations may result in additional discipline.

In the instant case, Claimant was late by two hours on March 14, 1984. He had been late both February 24 and 27, 1984, constituting three more late starts in a thirty day period. As such, Claimant was charged and the evidence adduced at the hearing showed him to be guilty of excessive absenteeism. Given his past record, the Carrier argues that the discipline was appropriate.

It is the position of the Organization that the Canton MW Shop policy on absenteeism is in conflict with the Agreement, particularly Rules 39 and 41. The Organization further argues that the Shop Policy was unfairly applied as the lateness of February 27, 1984, was the result of a blocking train and involved only five minutes. It also argues that the same dates used in an earlier suspension were used again in this case.

The Board finds nothing in the record of evidence or argument that would provide a basis for setting aside the Carrier's twenty (20) days' suspension. The Carrier has a right to establish a policy with respect to late starts, early quits and absenteeism. There is sufficient evidence of record that the Claimant had knowledge of and previous experience with said policy to make an assured effort to avoid lateness. The lateness of February 27, 1984, was one such additional late start that Claimant had the responsibility to avoid.


The use of the same dates are insufficient to set aside Carrier's discipline. In the instant case, considering the record, the Carrier's discipline was neither excessive, nor inappropriate (Third Division Awards 26265, 26266).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1988.