Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 28827
THIRD DIVISION Docket No. TD-28680
91-3-89-3-152

The Third Division consisted of the regular members and in addition Referee George S. Roukis when award was rendered.

PARTIES TO DISPUTE: (American Train Dispatchers Association
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Appeal of ten days suspension (held in abeyance) assessed Power Director E. L. Murdock, 5/10/88 - Carrier file NEC-ATDA SD-97D."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

The basic facts of this case are set forth as follows: Claimant was absent from duty on January 23, February 23, March 1, 6, 19, 22 and April 18, 1988. As a result of these absences and based upon the issuance of two (2) prior attendance warning letters dated July 16, 1987, and January 12, 1988, Claimant was notified by letter dated April 21, 1988, to appear for an investigation which was held on May 13, 1988. She was charged with violating Amtrak's Rules of Conduct, specifically Rule O. Based upon the investigative record, Carrier found Claimant guilty of the asserted violation and she was assessed a ten (10) days suspension (held in abeyance) which was contested and appealed by the Organization.

In defense of its petition, the Organization contends that Claimant was legitimately ill on the aforesaid dates, and as such, it was indeed unreasonable to assess discipline. It cited Third Division Award 28216 as supportive of this interpretative position. It also maintains that since her absences were not challenged when she reported off on each date, it was improper for Carrier to later charge her with violating Rule O. It cited Third

Division Awards 23555 and 22820 as controlling on this point. It asserts that her absences were due to bona fide medical reasons, namely, extensive oral surgery, and observes that her dentist verified this treatment. His note (undated) read: "Eloise Murdock has been under my care since 11-16-87 for extensive dental work. If there are any questions you can call our office at 638-2033. Thank you. Abram M. Bennett, D.D.S."

In response, Carrier contends that Claimant was previously warned that her absences were considered excessive and hence she was on notice that she would have to improve her attendance or else be subject to disciplinary action. It does not dispute per se, the Organization's contention of approved absences, but argues that a point is reached, when an employee's absences become palpably intolerable. It observes that Claimant had been absent, late or left work early on 29 days in 1987, and had been absent on 10 days between January 1 and April 21, 1988. It also notes that she could not identify whether the absent dates in the instant matter coincided with actual dental treatment, and the apparent omission in the undated dentist's note as to her ability to work her assignment. It referenced Second Division Awards 11114, 10758 and 8564, et al as defining authority on the question of excessive absenteeism.

In considering this case, the Board concurs with Carrier's disciplinary finding. Firstly, Claimant had been warned on two previous occasions that she had to improve her attendance. Thus she was amply notified that continued absences would lead to discipline. Secondly, while she was given permission to be off on the days cited in the Notice of Investigation, she could not verify whether she was actually treated on these dates. There is no hard evidence indicating that she was unable to work on these days. More pertinent in the absence of prior attendance warnings, the Board would have little difficulty accepting Claimant's representations at face value, but given the unclarity of the dentist's note and Claimant's inability to correlate the absent dates with the treatment dates and the lack of information indicating her actual physical condition on these dates, the Board, of necessity, must find that her absences were excessive. This finding is consistent with our past rulings on excessive absenteeism. While there is no fixed or concrete measure as to what constitutes excessive absenteeism, and each case is fact specific, we find that her absences on the cited dates were excessive, particularly when considered in the context of her attendance record, the prior two (2) warnings and the unclarity of her actual condition on these dates.

On the other hand, we find that the penalty assessed was excessive under these circumstances and accordingly, it is reduced to five (5) days suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1991.