

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

Award No. 36380  
Docket No. CL-36666  
03-3-01-3-310

The Third Division consisted of the regular members and in addition Referee Barbara Deinhardt when award was rendered.

(Transportation Communications International Union  
**PARTIES TO DISPUTE:** (  
(Indiana Harbor Belt Railroad Company

**STATEMENT OF CLAIM:**

“Claim of the System of the Brotherhood (GL-12739) that:

- (a) The Carrier acted in an arbitrary and capricious manner when it unjustly assessed discipline of reprimand on Mr. Jeffrey M. Tapper on April 25, 2000.
- (b) Claimant's record be cleared of the charges brought against him on February 18, 2000.
- (c) Claimant be compensated for wage loss sustained in accordance with the provisions of Rule 36(e).”

**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 employee 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 were given due notice of hearing thereon.

**The Claimant is a clerical employee who has been employed by the Carrier since May 1977. He received a reprimand on April 25, 2000 for violation of the Carrier's absenteeism policy.**

**According to the Carrier's Clerical Employees Absenteeism Procedural Statement, effective August 1, 1997 and modified March 1, 1999, "those clerks whose absenteeism rate places them in the upper five percentile (5%) outside the normal distribution curve will be considered to have excessive absenteeism. Those clerks will receive a letter to attend an informal informational counseling session. Each subsequent six-month period will be reviewed for absenteeism for a five-year period. Excessive absenteeism, as defined . . . above, that occurs in subsequent six month time periods within this five-year period will be handled in a progressively severe manner as outlined below." The policy was distributed to all employees covered by it.**

**Pursuant to this policy, the Claimant was counseled about his attendance on February 11, 1999. Thereafter, the Claimant was absent on eight specific dates in the six-month period from July 1 to December 31, 1999.**

**On February 18, 2000, the Claimant was notified to report "for an investigation/hearing to develop the facts and determine your responsibility, if any, in connection with your alleged violation of the Indiana Harbor Belt Railroad Clerical Absenteeism Procedural Statement."**

**Following an Investigation held on April 5, the Claimant was found guilty and was issued a reprimand on April 25, 2000.**

**The Organization appealed the decision by letter dated May 7, 2000. The appeal was denied by J. E. DeWitt, Comptroller on July 14, 2000, and the Organization appealed the decision on September 1, 2000. That appeal was denied by the Manager of Labor Relations on October 24, 2000.**

**The Organization argues that the Claimant was disciplined for absences that had been approved by his Supervisors and for which he had been paid. As such, they should not be the basis for discipline. Further, the policy at issue here is deceptive in that it punishes employees for pre-approved absences and it makes it impossible for an employee to know whether his attendance is excessive in any particular period. Thus the policy should not be enforced.**

The Carrier argues that it properly found that the Claimant was excessively absent. The policy has been in effect for a number of years and makes clear to employees that they are expected to be regular in attendance. The Claimant had been previously counseled about the need to improve his attendance, yet continued to be excessively absent.

In a statistical analysis of the attendance records of all clerical employees for the period July 1 - December 31, 1999, it was determined that because there were 96 employees during this period, five percent was 4.8 employees. Due to rounding it was determined that five percent of the total population of clerical employees covered by the absenteeism policy during that six-month period was five. It was discovered that the employee who had missed the most days during that period had missed 33 days. The next most frequently absent employee had missed 11 days, the next nine and then the Claimant who had missed eight. Thus at least those four employees were considered to have been excessively absent, as they were in the top five percent.

We find that the Carrier met its burden of justifying the Claimant's discipline for being excessively absent. There is no question that he was in fact absent eight times in the six-month period and that record put him in the top five percentile, as excessive absenteeism is defined in the Carrier's policy. He had been informally counseled earlier the same year. Precedent is clear that an employer may maintain an absenteeism policy that imposes discipline for excessive absences, even when those absences are for legitimate reasons, have been approved for pay purposes and have been paid. It is not for us to substitute our judgment about what is the appropriate measure of excessive absenteeism. The Carrier's policy has been in effect for a number of years and there is no claim that the employees were not aware of it. In this case, there is no allegation that it was not applied to the Claimant consistent with its stated provisions. The discipline must therefore be upheld.

The Agreement was not violated.

#### AWARD

Claim denied.

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**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**By Order of Third Division**

**Dated at Chicago, Illinois, this 18th day of February 2003.**