

PUBLIC LAW BOARD NUMBER 3530

Award Number: 61

Case Number: 61

PARTIES TO DISPUTE

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

AND

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM

Extra Force Laborer, L. E. Jonas, 1410 Maple St., Kenova, WV 25530, was assessed a 5 day actual suspension for alleged absenteeism. Claim was handled on the property in accordance with Railway Labor Act and agreement provisions. Employees request payment for the 5 days actual suspension with seniority and vacation rights unimpaired.

FINDINGS

Claimant was employed as an Extra Force Laborer at Carrier's Scioto Division. By letter dated June 22, 1984, Claimant was notified to attend an investigation concerning charges of excessive absenteeism. An investigation was held on August 10, 1984. As a result of the investigation, Claimant was assessed a five day suspension.

The issue to be decided in this dispute is whether Claimant was suspended for just cause under the Agreement.

The position of the Organization is that Carrier failed to substantiate the charge of excessive absenteeism.

Initially, the Organization contends that Carrier violated the Agreement by failing to afford Claimant an investigation within 30 days of its knowledge of the offense. The Organization argues that Carrier's use of Claimant's past absences dating back several months violated the 30 day rule in that Carrier failed to afford Claimant an investigation within 30 days of the cited absences. The Organization contends that Carrier's failure to abide by the 30 day rule makes any discipline based on Claimant's past conduct invalid.

The Organization argues additionally that Claimant's prior absences were not previously challenged by Carrier and were in fact in compliance with Rule 26. The Organization maintains that the fact that Claimant's absences were, in fact, legitimate further indicates that Carrier's actions were completely baseless.

The position of the Carrier is that Claimant was properly disciplined on the basis of his record of excessive absenteeism.

Initially, Carrier contends that Claimant was proven guilty of the charge by substantial evidence. Carrier cites the fact that Claimant was absent on seven occasions and tardy on five other occasions between April 25, 1984 and June 25, 1984, and argues that Claimant's record above stands as substantial evidence of his inability to protect employment on a consistent

basis. Carrier further contends that Claimant's testimony manifested an inability on his part to explain several of the absences, further establishing the propriety of the charge. Carrier maintains that Claimant was fully aware of the need to protect employment on a consistent basis and cites two warning letters issued to Claimant during the period in question.

Finally, Carrier denies any violation of the 30 day rule. Carrier maintains that excessive absenteeism, by its very nature, does not become apparent until a pattern is established. Carrier argues, therefore, that it was not aware of the problem until June of 1984 when charges were finally brought. Carrier maintains that it complied with the rule requiring investigation within 30 days of knowledge of the offense.

After review of the record, the Board finds that the Organization's claim must be denied.

It is not the purpose of this Board to rehear an investigation that Carrier held but only to determine if the discipline imposed was arbitrary, capricious or an abuse of discretion.

Initially, we reject the Organization's contention regarding the 30 day rule. As we have stated in other cases involving excessive absenteeism, a Carrier is not deemed to be aware of an offense concerning excessive absenteeism until the level of

absenteeism reaches the "excessive" point. Thus, the fact that absences occurring several months earlier are relied upon to support a charge of excessive absenteeism does not defeat the charge--rather, it is an essential element of the charge. Nor does the fact that no disciplinary action was taken regarding the past absences defeat the charge. There need not be a showing of unexcused absences when the nature of the charge involves the inability, for whatever reason, of the employee to protect his assignment. In the present dispute, we find that Carrier sustained the charges against Claimant. Carrier has a right and a need to expect regular attendance from its employees.

AWARD

Claim denied.

Nicholas Kumar
Neutral Member
J. C. Lyons
Carrier Member
Bruce L. Bell
Organization Member

DATE: 1-29-88