

BEFORE PUBLIC LAW BOARD NO. 4633

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
and
INDIANA HARBOR BELT RAILROAD COMPANY

Case No. 5

Dispute: Claim of the Brotherhood:

- (1) The dismissal of Laborer W. Lee, Jr. for excessive absenteeism was arbitrary, capricious, exceedingly harsh and based on unproven charges.
- (2) The Claimant shall be reinstated to service with seniority and benefits unimpaired, his record cleared of the charges leveled against him and he shall be compensated for all wage loss incurred.

Findings:

Claimant W. Lee, Jr. was employed as a Trackman by the Carrier. On November 16, 1987, the Claimant was notified to attend an investigation and charged with:

excessive absenteeism which is indicated by your failure to perform service on six days out of 32 days or 18.75% of the time during the period of September 18, 1987, through November 2, 1987.

The investigation was held on December 3, 1987, and as a result, Claimant was dismissed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging his dismissal.

This Board has reviewed the evidence and testimony in this case and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of excessive absenteeism when he failed to report to work on September 18, 1987, October 2, 1987, October 5, 1987, October 23, 1987, October 29, 1987, and November 2, 1987. That record of absenteeism is clearly a violation of the Carrier's attendance rules.

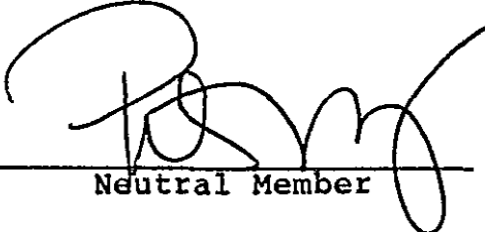
Once this Board has determined that there is sufficient evidence

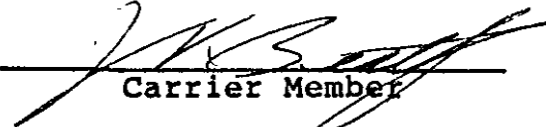
in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a carrier's imposition of discipline unless we find its action to have been unreasonable, arbitrary or capricious.

The Claimant was dismissed from service on December 12, 1987, after the investigation in this case. The record reveals that he had been previously progressively disciplined with three warning letters in 1986, a ten day suspension and a thirty day suspension in 1987. All of that discipline had failed to aid the Claimant in improving his attendance. The Carrier cannot be expected to continue to retain in its employ a Claimant who fails to show up for work after being warned on numerous occasions that his absenteeism had become excessive. Therefore, this Board does not find that it was unreasonable, arbitrary or capricious for the Carrier to terminate the Claimant's employment.

AWARD

Claim denied.


Neutral Member


Carrier Member


Organization Member

Date: 7-27-90