

BEFORE PUBLIC LAW BOARD NO. 4633

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

Case No. 9

Dispute: Claim of the Brotherhood:

- (1) The dismissal of Trackman E. DePillars for "excessive absenteeism" was arbitrary, capricious, based on unproven charges and an abuse of the Carrier's discretion.
- (2) The Claimant shall be reinstated to service with seniority and benefits unimpaired, his record cleared of the charge brought against him and he shall be compensated for all wage loss suffered.

Findings:

Claimant was a trackman employed by the Carrier. On July 28, 1987, Claimant was instructed to attend an investigation:

to determine the facts and your responsibility, if any, in connection with excessive absenteeism which is indicated by your failure to perform service on 19 days out of 121 days or 15.7% of the time during the period of November 17, 1986, through July 27, 1987.

The investigation was held on August 11, 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 was absent for 19 days during the period November 17, 1986 through July 27, 1987. Therefore, the Carrier had a sufficient basis to impose discipline on the Claimant.

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.

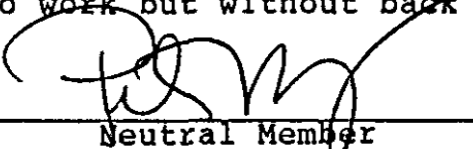
In the case at hand, the Claimant has previously had problems with excessive absenteeism. His record reflects two warnings and two previous suspensions. The Carrier has decided that at this point it has sufficient cause to justify a discharge.

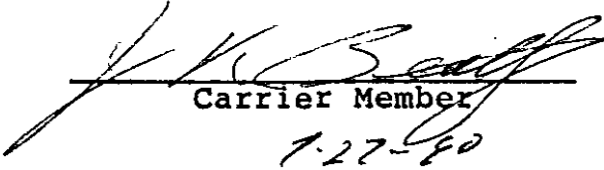
This Board disagrees. Although the record reveals the Claimant had a poor absenteeism record, it is also clear that the Claimant has 13 years of service and over the past few years has been having significant problems with a very sick daughter. The Claimant testified at the hearing that many of the absences resulted from his daughter's sickness. Although this Board has found that the reasons for absenteeism often do not matter, in this case it is apparent that the Carrier acted arbitrarily when it terminated the Claimant's employment.

Therefore, this Board finds that the Claimant should be reinstated to service but without back pay. The Claimant should be put on notice that before returning to work he must make appropriate arrangements to take care of his daughter and any other problems he might have which would impede his ability in coming to work. Once this is done, he should be returned to work and be advised that any further absenteeism problem will lead to his termination.

AWARD

Claim sustained in part in accordance with the above findings. Claimant is to return to work but without back pay.


Neutral Member


Carrier Member


Organization Member