

Special Board of Adjustment No. 956

PARTIES
TO
DISPUTE:

Brotherhood of Maintenance of Way Employees
and
New Jersey Transit Rail Operations

STATEMENT
OF
CLAIM:

The discipline assessed Claimant H. Shumate for absenteeism was unjust and unsupported by the evidence. His record should be cleared of the December 12, 1983 charges and he should be compensated for all wage loss suffered as a result of that discipline administered December 29, 1983.

FINDINGS:

On December 29, 1983, claimant was dismissed for being absent without permission on December 9, 1983 "which in light of your having previously been absent on November 4, 10, 11, 14, 15 and 16, 1983 constitutes excessive absenteeism." That discipline was reduced to a 30-day deferred suspension on the following day.

The evidence upon which the discipline is based shows that claimant was absent on December 9, 1983, that he had been given a warning letter on November 30, 1983 regarding absenteeism and had been absent on the six November 1983 dates mentioned in

"Statement of Claim."

Claimant had on December 1, 1983 been given a deferred 30-day suspension for excessive absenteeism and leaving his assignment 30 minutes early on November ³⁰38, 1983. At the time that discipline was assessed, all evidence on which the December 29, 1983 discipline is based was before management for consideration, except for the December 9 absence.

With respect to that lone absence, claimant did call in and speak with the clerk on duty and did present a doctor's certificate that he was "house confined on December 9" due to a viral syndrome. He did not speak with his supervisor when he called in and obtain permission to be absent because his supervisor had not arrived at the time the call was made. The supervisor testified that he would not know who called in before the start of the shift until some 15 minutes after the shift begun.

While discipline may be warranted in certain situations on the basis of a single day's absence, it is not appropriate in this case. It would have been sounder personnel practice to have discussed the December 9 incident with claimant and, if deemed necessary, to give him a warning. As it was, Carrier displayed unseemly haste in rushing to impose heavy discipline upon claimant after he had been absent one additional day; the situation did not call for such an extreme reaction as first outright dismissal and then, a day later, a 30-day deferred suspension. The discipline and the single absence should have been considered with more care and in depth.

It is our conclusion after examining the record, that claimant was being unduly harassed and that the discipline must

be set aside.

Contrary to Petitioner's contention, we do not find that the hearing officer showed prejudice and prejudgment. He would have been better advised, however, to have permitted claimant to continue his inquiry into disparity of treatment which certainly is a relevant factor.

Carrier's motion to dismiss the case and remand it to the parties for further discussion will be denied. We find no sound reason for such dilatory action. Carrier has not been prejudiced by any failure to handle the dispute in the proper procedural manner and it had at least the opportunity to discuss the appeal at each appellate level. The defects upon which our decision to set aside the discipline rest are major errors that are patently visible in the record and cannot be satisfactorily explained way at this stage.

AWARD:

Claim sustained. To be effective within 30 days.

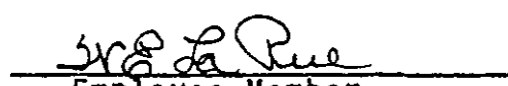
Adopted at Newark, N.J., January 28, 1985.



Harold M. Weston, Chairman



Carrier Member



Employee Member