

The Second Division consisted of the regular members and in addition Referee Joseph S. Cannavo when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Firemen and Oilers
(CSX Transportation, Inc.)

STATEMENT OF CLAIM:

1. That under the current and controlling Agreement, Service Attendant S. A. Tyus, I. D. No. 184730, was unjustly suspended from service on March 6, 1989 by Mr. J. L. Gant, Mechanical Superintendent, after an investigation was conducted by Mr. T. D. Burns, Assistant Terminal Trainmaster on February 8, 1989.

2. That accordingly, Service Attendant S. A. Tyus be compensated for the thirty (30) work days falling between March 6, 1989 and April 14, 1989, both dates inclusive, and his personal record expunged of any reference to this suspension from service.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

As a result of an Investigation held on February 8, 1989, the Claimant was assessed a thirty day actual suspension for violation of Rule 7 of the Rules and Regulations of the Mechanical Department of the former Seaboard System Railroad. The charge was based on the Claimant's attendance record which showed he had been absent on a total of 48 days during the six months from August 1988, through January 1989. These absences constituted an absenteeism rate of about 37%.

The Organization raises a procedural argument which we find to be without merit. The Organization claims that error was committed in that the charges Claimant faced on February 8, 1989, clearly specified alleged violations on dates ranging from August 2, 1988, through January 19, 1989, a time span of some six months. As such, the Organization charges that the six-month time span is well beyond the ten day time limit specified in the Agreement, as amended effective April 1, 1985.

This Board rejects the Organization's argument that the Carrier should not have considered the Claimant's attendance record for the period prior to the ten days immediately preceding the date of the charge letter. This Board has held on numerous occasions that if the Organization's position was sustained, excessive absenteeism could never be the subject of an investigation and that this was obviously not the intent of the parties. The three days of absences which occurred during the ten days prior to the charge letter brought the Claimant's attendance record to the point of excessiveness. Once the Carrier determined that the Claimant's absenteeism was excessive, it acted expeditiously in issuing the charge letter. The charge letter was specific and afforded the Claimant and his Representative the opportunity to prepare a defense to the charges. Further, the nature of the charges (an established pattern of chronic and repeated absenteeism) dictated that the various dates be stated in the charge letter. The Board notes that the charge dates included four dates within the ten days preceding the charge and thus the Carrier was within its rights to base the charge on the entire period. As such, the Claimant and the Organization were afforded all Agreement due process rights. This Board addressed the same issue in Second Division Award 11393:

"Third, the Organization contends that the Carrier improperly cited dates of alleged infraction beyond the ten day limit found in Section B of the Memorandum of Agreement. However, the charge in this case (chronic and repeated absenteeism) is, by its nature, a violation requiring the examination of a substantial period of time and we find nothing in the record to demonstrate that the Carrier unduly delayed bringing the charges."

Regarding the Claimant's absences, the evidence presented at the investigation showed conclusively that he was absent on 48 occasions during the six month period and that the Claimant was absent "no report" on 25 of those 48 occasions. Further, the Claimant presented no doctor's excuses or other documentation for his absences.

This Board has explained on numerous occasions the importance of regular attendance and a Carrier's right to assess discipline when employees do not meet this obligation. Every employer is entitled to expect that the job it provides an employee will be filled on a daily basis. Even where a Claimant provides the Carrier with notice of pending absences, the result does not change - that being that the work expected to be performed is not performed or is performed at premium cost to the Carrier. This Claimant has been afforded the benefits of Agreement due process and progressive discipline. The Claimant's record indicates that he has previously been issued two warning letters and assessed a twenty day actual suspension for excessive absenteeism. It is obvious to the Board that the previous discipline issued to the Claimant did not have its intended corrective effect. Therefore, we must deny the Claim.

A W A R D

Claim denied.

Form 1
Page 3

Award No. 12159
Docket No. 11947
91-2-90-2-63

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of October 1991.