

The Second Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

(International Association of Machinists and Aerospace  
( Workers  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

1. The National Railroad Passenger Corporation, (Amtrak) violated Rule 24 of the schedule agreement effective September 1, 1977, when it arbitrarily and capriciously dismissed Chicago Machinist M. Badzmierowski following investigation held on October 18, 1988.

2. Accordingly, the decision should be reversed, Machinist M. Badzmierowski restored to service with all rights, seniority and benefits unimpaired, made whole for any and all losses as a result of the decision, and his record cleared of any reference to the charge.

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.

Claimant was directed to appear for an Investigation of alleged violation of Rule 0 in that on September 4, 17, 23, 29 and October 2, 1988, he had absented himself from his assigned duties without permission. The Investigation of the Claimant's unexcused absences was held on October 18, 1988, and thereafter the Claimant was notified that he had been found guilty and was dismissed from the service of the Carrier, effective November 2, 1988.

The Organization has raised serious procedural objections which we have carefully considered. The Board finds that the Investigation protected the Claimant's Agreement rights and allowed a presentation of all necessary facts pertaining to his actions. The limitations argued by the Organization did not deny fairness to the degree that requires this Board to sustain the claim on procedural grounds. In addition, Rule 24 as it is written has been complied with by the Carrier. The record proves that the investigating officer rendered a decision. The facts support that discipline was assessed within the applicable time limits. The Board finds no procedural violations in the instant case.

On merits, a General Foreman testified that on September 4, 1988, the Claimant called off due to oversleeping and that on October 2, 1988, the Claimant called off due to muscle strain and the use of muscle relaxers. In both cases, time cards were marked as unexcused absences. Importantly, the Claimant was informed that medical documentation was necessary and to be provided for his October 2, 1988 absence. Another General Foreman testified that when the Claimant called in sick on September 17 and 23 he was informed to provide medical documentation. No medical documentation was ever provided in the instant case. His absence on September 29 for oversleeping was also marked as an unexcused absence.

A review of the Claimant's testimony confirms that he was ordered to provide medical documentation and did not. Claimant's explanation for his absences do not excuse them within the language of Rule 0. The medical form issued August 8, 1988 includes no return-to-work restrictions. There is no evidence in the record to document that the medical substantiation requested by both General Foremen was ever provided. The evidence of record is sufficient to prove that the Claimant is guilty as charged.

In view of this finding the only issue remaining is the appropriateness of dismissal. The Board finds the discipline herein as appropriate given Claimant's prior attendance and disciplinary record. Claimant was absent without permission on 33 days in 1986, 29 days in 1987, and 22 days in 1988. Claimant has been assessed discipline seven times, twice dismissed and reinstated, and previously assessed a deferred suspension for excessive absences under Rule 0. The Carrier's action will not be disturbed (Second Division Awards 8796, 8791, 7852; Third Division Awards 25853, 22524).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:   
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 18th day of September 1991.