

PUBLIC LAW BOARD NO. 3166

In the Matter of: ) National Mediation Board  
 ) Administrator  
BROTHERHOOD RAILWAY CARMEN )  
OF THE UNITED STATES )  
AND CANADA, )  
 )  
Organization, ) Case No. 75  
 ) Award No. 68  
and )  
 )  
CHICAGO AND NORTH WESTERN )  
TRANSPORTATION COMPANY, )  
 )  
Carrier. )

Date of Hearing: September 13, 1985  
Place of Hearing: Chicago, Illinois  
Date of Award: March 6, 1987

MEMBERS OF THE BOARD

Employees' Member: Mr. Patrick J. Murphy  
Carrier Member: Mr. Barry E. Simon  
Neutral Member: Mr. John B. LaRocco

STATEMENT OF THE CLAIM

1. Carman Robert Mahanna was erroneously charged with excessive absenteeism on August 30, 1984.
2. Carman Robert Mahanna was unjustly assessed sixty (60) days actual suspension on September 27, 1984.
3. Carman Robert Mahanna was deprived of his right to fair and impartial consideration and a fair and impartial hearing, in that the charge was improper, and Carrier officer E. Masech was engaged in conflicting roles.
4. That the Chicago and North Western Transportation Company be ordered to compensate Carman Robert Mahanna in the amount of eight (8) hours pay per day for the sixty (60) days he was unjustly suspended, plus all benefits to which he is entitled, in accordance with Rule 26, which is controlling.

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated October 12, 1981; and that all parties were given due notice of the hearing held on this matter.

By written notice dated August 31, 1984, the Carrier charged Claimant with absenteeism which became excessive on August 30, 1984.

At a September 14, 1984 investigation, the Proviso repair track Car Foreman produced payroll records showing that Claimant was absent on eighteen days and departed from work early on ten days during the period from January 1, 1984 through August 31, 1984. While Claimant could not recall each absence, he did not deny that he had been away from work on numerous occasions. Claimant was absent mostly because of illness but on one occasion there was a death in the family and on another date he was away from work due to an off the job injury. The records indicate that Claimant called in on most of the days. On several dates, Claimant either forgot to contact the Carrier or the supervisor taking the call neglected to make a notation. On January 26, 1984, the Car Department Manager counseled Claimant about his attendance record and urged him to improve his attendance.

The Organization initially argues that the notice of charges was imprecise because it failed to list each and every day that Claimant had been absent. According to the Organization, Claimant was unable to prepare a defense and thus he did not bring exculpatory records to the hearing. We must

overrule the Organization's objection. The charge of excessive absenteeism inherently connotes that the Carrier must review Claimant's attendance over a reasonable period of time to determine if he has been absent an abnormal number of days. In the notice of charges, the Carrier need not enumerate each absence. NRAB Second Division Award No. 9480 (Doering). Therefore, the investigation is not limited to the triggering absence but the Carrier properly inquired into Claimant's attendance record over a reasonable period of time.

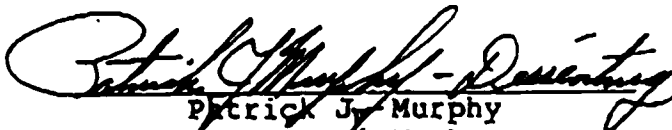
The Carrier came forward with substantial evidence proving that Claimant was excessively absent during the first eight months of 1984. Although most of Claimant's absences were excused, a large accumulation of even excused absences can constitute excessive absenteeism. The Carrier relies on a dependable and punctual work force. In this instance, Claimant's attendance record was poor. Also, he disrupted shop operations by departing early on many days.

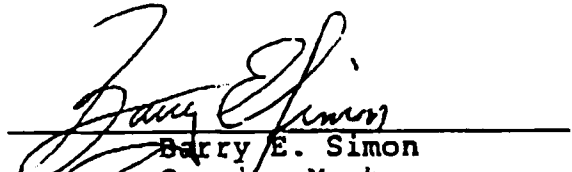
Claimant's prior work record shows that he was dismissed in 1982 for excessive absenteeism. After six months, the Carrier reinstated him to service on a leniency basis. Evidently, the prior discipline has not served to encourage Claimant to improve his attendance problem. Thus, the discipline imposed in this case was neither arbitrary nor unduly harsh.

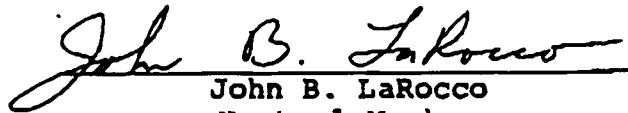
AWARD AND ORDER

Claim denied.

DATED: March 6, 1987

  
Patrick J. Murphy  
Employees' Member

  
Barry E. Simon  
Carrier Member

  
John B. LaRocco  
Neutral Member