

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. 77
)	Award No. 70
and)	
)	
CHICAGO AND NORTH WESTERN)	
TRANSPORTATION COMPANY,)	
)	
Carrier.)	

Date of Hearing: April 18, 1986
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 March 29, 1985.

2. Carman Robert Mahanna was unjustly dismissed from service on April 26, 1985, following investigation held April 12, 1985.

3. The Chicago and North Western Transportation Company failed to provide Carman Robert Mahanna with fair and impartial consideration upon appeal, as required by the controlling agreement.

4. That the Chicago and North Western Transportation Company be ordered to compensate Carman Robert Mahanna eight (8) hours pay per day from the date of his dismissal to the date of his reinstatement, plus all benefits to which he is entitled in accordance with Rule 26 of the controlling agreement.

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.

I. BACKGROUND AND SUMMARY OF THE FACTS

Pursuant to notice dated March 29, 1985, the Carrier charged Claimant, an Air Brakeman, with excessive absenteeism. Specifically, the Carrier alleged that Claimant's absences became excessive when he was absent on March 15, 1985, March 27, 1985 and March 28, 1985.

At an April 12, 1985 investigation, the General Car Foreman reviewed Claimant's attendance record for the first three months of 1985. Claimant was absent six days in March, four days in February, and one day in January. Claimant also departed work early on one day. On most dates, Claimant contacted the Carrier to lay off his second shift assignment but he did not always speak with a General Foreman. The Foreman's notebook did not disclose whether Claimant was given permission to be absent on the dates in question. When Claimant was absent six consecutive work days, he produced a physician's note attesting that he was being treated for a foot injury. In addition, Claimant left early one day because his infant son had suddenly taken seriously ill. Claimant was absent on other days because he was sick. On another day, he attended a marriage counseling session.

Claimant testified that he was experiencing marital problems. Also, Claimant complained that prior disciplinary sanctions created a financial strain which aggravated his marital difficulties. (See Award Nos. 67 and 68.) Claimant's wife verified that Claimant was regularly seeing a family counselor and that he was under great stress at both home and work.

Following the investigation, the Carrier discharged Claimant from service.

II. THE POSITIONS OF THE PARTIES

The Carrier contends that even if Claimant had good cause to be absent during January, February and March, 1985, the absences became excessive and intolerable. Claimant could have easily scheduled his counseling sessions during off duty hours. The record reveals that Claimant failed to contact the General Foreman in accord with Carrier policy and thus he lacked permission to be absent. Given Claimant's poor prior work record, discharge was the appropriate penalty. Lastly, the Carrier avers that Claimant was provided with a fair and impartial hearing. The Organization's procedural objections are in the Carrier's view, meritless.

The Organization initially argues that Claimant was deprived of a fair hearing because the hearing officer barred Claimant's representative from asking pertinent questions. In addition, the hearing dwelled on absences which were not expressly listed in the March 29, 1985 notice of charges. Turning to the merits, the Organization emphasizes that Claimant had good and sufficient reason for being absent. When he was

gone for longer than three days, Claimant properly tendered a doctor's note confirming that he was unable to work due to a broken toe. The Organization argues that Claimant's absences are understandable since he was enduring an extreme amount of stress emanating from sickness, marital problems and the illness of his youngest child. Since Claimant notified the Carrier of each absence in accord with schedule Rule 25, the Carrier officers impliedly granted Claimant permission to be off work.

III. DISCUSSION

We have carefully reviewed the transcripts of the hearing and we find that the Carrier accorded Claimant his contractual due process rights. Although the hearing officer may have improperly barred Claimant's representative from asking some questions, the questions concerned tangential matters which were remote from the subject matter of the charge. The hearing officer must maintain an orderly hearing. Any errors were harmless. Claimant's rights were not prejudiced. Claimant's representative vigorously defended Claimant against the charges. Finally, as we stated in Award No. 68, the Carrier need not list each absence in an excessive absenteeism charge.

The record reveals that Claimant for the most part had a legitimate excuse for being absent. This Board does not expect employees who are ill to come to work since they may pose a safety hazard to themselves and their fellow employees. Nonetheless, the Carrier rightly relies on a dependable, punctual and regular work force. Even excused absences can become excessive over a reasonable period of time if the employee is

away from work at an abnormally high rate. Sporadic absences are particularly disruptive forcing the Carrier to quickly call a replacement worker or to adjust its work force to compensate for the absent employee. Therefore, the Carrier presented substantial evidence that Claimant was excessively absent.

Claimant's personal problems invoke some sympathy. However, inherent in the employer-employee relationship is the employee's duty to keep his personal adversities separate from his work. A personal problem cannot fester to the point that it prevents an employee from fulfilling his basic work obligations. Otherwise, the Carrier's work force would be constantly disrupted each and every time an employee was suffering from a personal problem. Employees must be attentive and devoted to their work duties. Thus, Claimant should have attempted to resolve his personal problems on his own time.

We note that the sudden illness suffered by Claimant's infant son was unforeseen. This type of personal hardship is a sufficient excuse for being absent. However, Claimant herein experienced recurring personal problems which continually interfered with his basic responsibility to regularly report to work.

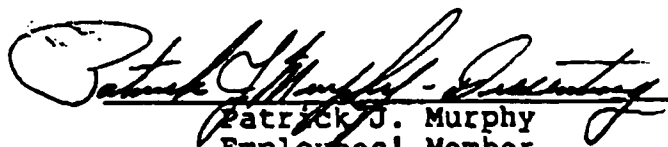
This is the third case involving this Claimant which has been brought before this Board. First, in Award No. 67, Claimant committed two instances of serious misconduct. Next, in Award No. 68, we ruled that Claimant had been excessively absent and thus we upheld the Carrier's assessment of a sixty day suspension. In addition, Claimant had been disciplined on three

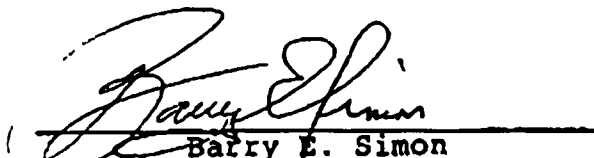
prior occasions for excessive absenteeism and received three letters of reprimand exhorting him to improve his attendance. At one time, the Carrier dismissed Claimant but later reinstated him to service. Finally, Claimant has been disciplined for four other infractions. The purpose of progressive discipline is twofold: to punish an employee who commits misconduct; and to encourage an employee to improve his behavior. In this instance, despite a prudent application of the progressive discipline principle, Claimant failed to improve his attendance. Therefore, we find no justification for reducing the assessed penalty.

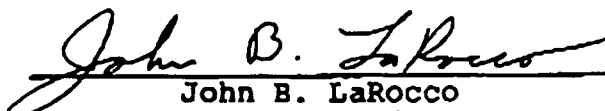
AWARD AND ORDER

Claim denied.

DATED: March 6, 1987


Patrick J. Murphy
Employees' Member


Barry E. Simon
Carrier Member


John B. LaRocco
Neutral Member