

**PUBLIC LAW BOARD NO. 5902**

**PARTIES ) UNITED TRANSPORTATION UNION-YARDMASTERS DEPT.  
TO )  
DISPUTE) NORFOLK SOUTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:**

Claim on behalf of Harrisburg Division Yardmaster J. C. Cordell for payment of all time lost as a result of 20-day suspension which activated a 14-day deferred suspension for his failure to notify a designated officer of his absence on October 12, 1999, and excessive absenteeism. (File: AM-BAL-99-2)

**FINDINGS:**

The Board, after hearing upon the whole record and all the evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended; this Board has jurisdiction over the dispute involved herein; and, the parties were given due notice of hearing thereon.

The discipline here at issue arises in connection with the Claimant having admittedly failed to notify a Carrier officer that he would not be reporting for duty as scheduled as a Yardmaster at the Bayview Yard Office in the Baltimore, MD Terminal at 2:30 P.M. on October 12, 1999.

On the date at issue in this case, October 12, 1999, the Claimant was on six-months disciplinary probation in waiver of a right to a formal hearing involving a like offense in a failure to have notified a designated officer that he would not be reporting for his regular assignment as a Yardmaster at the Bayview Yard Office at 6:30 A.M. on September 26, 1999. In entering into a waiver of hearing agreement on October 6, 1999 for this prior offense, the Claimant acknowledged that in light of his previous work record that his absence on September 26, 1999 constituted excessive absenteeism. In addition, the waiver agreement prescribed:

In consideration of my accepting responsibility in connection with the incident described above, I understand that I am assessed 14 (fourteen) days deferred suspension (with a 6-month probationary period) and that this acceptance precludes me or any representative acting on my behalf from appealing this discipline under a collective bargaining agreement.

The record also reveals that the Claimant had on several occasions in the past been cautioned, reprimanded and suspended for excessive absenteeism.

Thus, in charging the Claimant for his absence from duty in the case at issue (October 12, 1999), the Carrier again properly said that the violation, in light of the Claimant's previous work record, constitutes excessive absenteeism.

The Board is not persuaded by Claimant's defense that he could not notify the Carrier of his intended absence because, as stated, he was "groggy and asleep most of the day due to the medication for blood pressure and diabetes trouble," and that he has a letter from his personal physician about his condition.

The letter presented from a Dr. Robert J. Lynch, dated August 23, 1999, does not support a finding that the Claimant is not able to report for work. Nor does the letter relate why the Claimant's physical condition should be viewed as keeping him from telephoning his supervisor to let the latter know that he will be unavailable for a scheduled work assignment. Dr. Lynch's letter merely states that the Claimant has "medical illnesses including hypertension and diabetes mellitus" and that "these medical conditions sometimes prevent him from driving immediately to work traveling long distances to Baltimore." In any event, neither the Claimant's contentions as to why he was not able to notify his supervisor of an intended absence from work nor Dr. Lynch's letter are found to mitigate the Claimant absenting himself from work without proper authority.

In this same respect, and as concerns past problems that the Carrier has had with the Claimant in absenting himself from work without notice, the Board finds significant the following testimony of a Carrier District Superintendent as concerns the seriousness of a failure on the part of an employee to give timely notice as soon as possible of an inability to report for work as scheduled:

Mr. Cordell and I had a conversation about these exact things and I stressed to him that if he was not going to come to work, to at least call us, and don't call us at 6:30 or 6:40 when you are suppose to be here. Call in advance so we can get someone to take your place. Taking off is one problem, not showing up, not notifying anybody is a totally different problem and that is what we are facing.

It is also noted that a Carrier Trainmaster, when asked at the company hearing if he had attempted to talk to or call the Claimant on October 12, 1999, made the following unrefuted statement:

We tried to contact Casey numerous times on October 12<sup>th</sup>, I think the times were 3:10 PM and some other times we have written down over there where we tried to contact him. I believe we finally got a hold of his wife later on that day.

As set forth in prior awards of boards such as this, a carrier has a right to hold an employee accountable for excessive absences even where some of the absences are due to illness, for no carrier can compete or operate efficiently and effectively if its employees cannot be depended upon to report for work with a high degree of regularity. Unfortunately, we have before us an employee who, despite warnings, counseling and discipline, has apparently elected to ignore such admonishments and instead continue to offer myriad and unsubstantiated reasons for a proclivity to unilaterally absent himself from work.

In the circumstances, and procedural argument advanced by the Organization found to be without merit sufficient to set the discipline aside, the Board finds no reason to disturb the discipline as imposed by the Carrier for this latest failure on the part of the Claimant to give notice of an inability to report for his scheduled work assignment. The claim will therefore be denied.

**AWARD:**

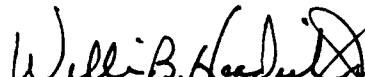
Claim denied.



Robert E. Peterson  
Chair & Neutral Member



Robert J. Kuhn  
Carrier Member



William B. Headrick, Jr.  
Organization Member

Norfolk, VA.

Dated: July 16, 2001