

NATIONAL RAILROAD ADJUSTMENT BOARD
FIRST DIVISION

Award No. 24168
Docket No. 43784
92—1—91—1--U—16 55

The First Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

(Brotherhood of Locomotive Engineers
PARTIES TO DISPUTE: ((Union Pacific Railroad Company

STATEMENT OF CLAIM:

“Claim of Engineer V. T. Murphy for the removal of a Letter of Warning dated June 28, 1990, concerning alleged absenteeism, from his personal record.”

FINDINGS:

The First 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.

The Claimant was assigned to the Engineer’s Extra Board at North Little Rock, Arkansas. The Board is a seven day a week assignment, protecting vacancies that may occur within the seniority district. Since this assignment works seven days a week, employees are permitted to lay—off for personal reasons, from time to time as the Carrier’s service allows. The parties have an Agreement governing “Laying Of f and Leave of Absence” dated October 22, 1982. Paragraph 1 of that Agreement states:

“LAYING OFF AND LEAVE OF ABSENCE

1. When employees in engine service are permitted to lay off they must not be absent in excess of 30 days, except in case of sickness or injury, without having formal leave in writing, granted in accordance with the provisions of this agreement.”

The Carrier permits employees to lay off upon request by individual employees. After reviewing the number of trains to be run, the number of engineers available and other factors which ensure that the Carrier's service is protected, an employee may then be permitted to lay off. Paragraph 1, set forth above, mandates that when employees in engine service are permitted to lay off, they must not absent themselves in excess of thirty days unless sick or injured without obtaining a formal Leave of Absence in writing. While the Carrier submitted certain counter—proposals to the Organization's Section 6 Notice of June 28, 1989, one of which would reduce the thirty day period set forth above to 7 days, such a modification has not been agreed upon by the parties. At this time, the Laying Off and Leave of Absence provisions remain in effect, and the nearly forty years of handling under this Agreement continues in full force and effect. In general and without reference to the facts of the instant case, employees must not abuse the provisions of the Laying Off and Leave of Absence provisions. The Carrier has the right to insist that employees be full time employees and that they not lay off or absent themselves for excessive periods of time. This Board has no difficulty with supervisors meeting with individuals whose job protection records are unsatisfactory, and explaining to them that their job protection record is lacking and notifying them that they must become full time employees. We have no problem with such supervisors confirming their meetings and reasonable expectations in a follow— up letter.

This Board need not, and therefore does not get into the specific allegations about the job protection record of the Claimant in the instant case because the underlying instruction contained in the Carrier's letter to the Claimant is in conflict with the Agreement and is contractually improper. The letter states:

“Dear Mr. Murphy:

This letter is in reference to your poor performance in regard to properly protecting your assignment with the Union Pacific Railroad.

From April 28, 1990, to June 27, 1990, you have been unavailable for service 13 days, 6 hours and 54 minutes, or 22.15% of the time. This is not acceptable to the Union Pacific Railroad and we will no longer tolerate employees working part time when they are full time employees.

This letter will serve as instruction to you that I will no longer tolerate anyone abusing the system by protecting their assignment on a part time basis. You must protect your assignment no less than 80% of the time for any 61 day period.

I will be personally tracking your performance for the next 60 days and if you fail to comply with my instructions you will leave me with no alternative but to schedule a formal investigation to determine and place responsibility.

If you have any questions or comments concerning this letter of instruction to you, please feel free to contact me or my office to set up an appointment and discuss these questions or comments that you may have.

See no failure to comply with my instructions.

Sincerely,

s/S. L. Hefley
Supt Transp Services

The Carrier's mandatory requirement set forth in the third paragraph of the letter requiring that the Claimant protect his seven day a week extra board assignment no less than 80% of the time for any 61 day period or suffer a formal investigation on the matter is contrary to the contractual rights set forth in Section 1 of the Laying Off and Leave of Absence Agreement where an employee on occasion might reasonably be permitted to lay off for up to thirty days, and such would clearly exceed the Superintendent's 80% requirement. Since the basic restriction of the letter is in conflict with the Laying Off and Leave of Absence Agreement, and thus cannot serve as a basis for discipline, this contractually improper letter must be removed from the Claimant's record.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Dated at Chicago, Illinois, this 19th day of August 1992.