

Award No. 2329

Docket No. 2127

2-IC-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the current agreement did not authorize the Carrier to remove the name of Helen Baum from the Carman Helper's seniority roster on September 29, 1954, at E. St. Louis, Illinois.

2. That in view thereof the carrier be ordered to compensate her for all time lost between October 5, 1954 and July 2, 1955.

EMPLOYES' STATEMENT OF FACTS: Mrs. Helen Baum, hereinafter referred to as the claimant was employed as a carman helper at E. St. Louis, Ill., with a seniority date of February 25, 1943. After requesting and receiving permission to be absent she entered the Illinois Central Hospital, at Chicago, Illinois, on August 10, 1954 and was released from the hospital at 5:00 P. M., August 16, 1954.

Before leaving for the hospital, the claimant was notified by telephone that she was bumped by a senior helper, Mason Caldwell. After returning home, the claimant made a written request for a ninety (90) day leave of absence under date of August 25, 1954, and because she was not able to work she visited a son in California, where she could rest and recuperate from her illness.

In place of granting a leave of absence, the general car foreman sent a letter to the claimant under date of September 8, 1954, advising her that she was absent in violation of Rule 23, and requesting that she return to work immediately.

The claimant replied to the general car foreman's letter under date of September 23, 1954, advising him that she was unable to work but that she would return as soon as she could get her passes renewed and asked that he grant her that request. See page nine (9) of transcript of investigation held on October 14, 1954.

In reply, the general car foreman addressed a letter to the claimant under date of September 29, 1954, declining to renew the passes and informed her

ploye must be obedient to the orders of his superior. If he has complaints to make there are proper methods for doing so. . . ."

Also in Award 1543, Second Division:

" . . . Regardless of what rights an individual employe coming under a collective bargaining agreement may have by reason thereof he still owes obedience to the orders of his superiors when on duty. He is not at liberty to assert those rights for himself but must comply with any orders given him. His failure to do so will make him subject to discipline. If, in obeying such orders, any rights which he may have by reason of the agreement are violated his redress lies through the channels which the agreement provides for his protection. In this respect, the individual employe does not waive any of these rights by complying with the orders of his superiors."

There can be no reason for doubt that claimant's absence from her position was improper and unjustified. Refer to Second Division Award 1890.

There is no basis for the claim, and it should be denied.

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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

The organization contends carrier improperly removed the name of Helen Baum from the carmen helpers' seniority roster at East St. Louis, Illinois as of September 29, 1954. The relief asked is that carrier be ordered to compensate her for all time lost between October 5, 1954, when she reported for work, and July 2, 1955, when she was restored to service.

On September 29, 1954 L. R. Barron, carrier's general car foreman, notified claimant by letter as follows:

"This is to inform you your name is being removed from the Carmen Helpers seniority roster of East St. Louis, Illinois this date. Your personal file is being closed account of desertion."

On October 5, 1954 claimant contacted Barron about going back to work. As a result of that meeting she requested an investigation, as she had a right to do under Rule 37 of the parties' agreement, to determine the facts relating to carrier's action to see if it was justified in taking the action that it had. Such an investigation was held on October 14, 1954 and this appeal has been taken therefrom. The claim terminates with July 2, 1955 because on June 29, 1955 the parties entered into a letter of understanding whereby claimant, as a matter of leniency, was permitted to return to carrier's service, subject to certain requirements, without prejudicing her rights in this appeal. She returned to service on July 8, 1955.

There was evidence adduced at the investigation which would support a finding of the following facts: that on August 9, 1954, after she had completed her tour of duty, claimant absented herself from her work for the purpose of going to the hospital for employes in Chicago, Illinois, for treatment of an illness with which she was then afflicted; that she entered this hospital about 7:30 a. m. on the morning of August 10, 1954; that she was released therefrom about 5:00 p. m. on August 16, 1954 with a notation on her release slip stating,

"back to work immediately"; that upon her return to East St. Louis she failed to report for work but, on August 25, 1954, addressed a letter to L. R. Barron, general car foreman, asking that she be granted a ninety (90) day leave of absence "account of sickness"; that on the following day, August 26, 1954, claimant went to the office of a local doctor, Dr. Eric Lehr, with her release from the hospital and asked him to recommend a ninety (90) day sick leave for her; that Dr. Lehr advised her he could not do so because he could find nothing wrong with her; that on the same day, and while claimant was in his office, Dr. Lehr called General Car Foreman Barron by telephone and told him of claimant's request and that he could not so recommend; that Barron then talked to claimant on the telephone and told her she would not be able to get the ninety (90) day leave she had requested unless a doctor recommended it in writing; that claimant thereafter failed to report for duty; and that, on the same day, she left for California to visit her son.

It appears that claimant had planned to visit her son in California in June of 1954, when she took her annual vacation, and obtained passes for herself and daughter for that purpose. However, due to circumstances arising, she did not go. However, she had obtained the passes, which would expire on August 28, 1954, so when she got a letter from her son saying she could come out and rest she left for California on August 26, 1954.

By letter dated September 8, 1954, and addressed to claimant at Riverside, California, General Car Foreman Barron advised her to the effect that:

"You have been absent from work in violation of Rule 23 of the Schedule of Rules between the Illinois Central Railroad and System Federation No. 99, since August 20, 1954. You are requested to return to work immediately with a satisfactory explanation as to why you were absent in violation of Rule 23, or you will be removed from the Carmen Helpers seniority roster of East St. Louis, Ill."

Claimant replied to this letter from California on September 22, 1954. In her reply thereto she stated:

"I have been sick and unable to return to work as you requested. I will return to St. Louis as soon as I can have my passes renewed * * *. I'm sorry if I have caused any trouble concerning my job as I like it very much and wish to keep it."

What followed thereafter has already been set forth.

Rules 22 and 23 of the Parties' agreement are as follows:

"Rule 22. When the requirements of the service will permit, employees, on written request, will be granted leave of absence for a limited time, with privilege of renewal. An employee absent on leave who engages in other employment will lose his seniority unless special provision shall have been made in writing therefor with the proper official and committee representing his craft."

"Rule 23. No employee shall absent himself from work for any cause without first obtaining permission from his foreman if possible, except in case of sickness, when he shall notify his foreman as soon as possible. 'Personal business' will be sufficient reason to request leave of absence without detailed explanation thereof."

When claimant took time off on August 9, 1954, after completing her tour of duty on that day, in order to go to the hospital for treatment it was proper for her to do so under the foregoing rules, as she had notified her foreman of her intent to do so. But thereafter she was wrong in going to California on August 26, 1954 to visit her son when she knew the leave she had asked for on August 25, 1954 had been denied. Assuming the carrier was wrong in denying it she still wouldn't be justified in taking the matter in her own

hands. Her relief, in such a case, would have been the procedures provided in the agreement therefor, which she was bound to follow. And, as provided in the second paragraph of Rule 33 of the parties agreement, "* * * while questions of grievances are pending, there will neither be a shut down by the employer nor suspension of work by the employees." We think claimant was wrong in what she did and that carrier was fully justified in taking the action that it took. In view thereof the claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1956.