Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10929
SECOND DIVISION Docket No. 10929
2-AT&SF-SMW-'86

The Second Division consisted of the regular members and in addition Referee Leonard K. Hall when award was rendered.

Parties to Dispute: (Sheet Metal Workers' International Association
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(The Atchison, Topeka and Santa Fe Railway Company

Dispute: Claim of Employes:

1. That the Atchison, Topeka and Santa Fe Railway Company violated the controlling agreement, particularly Rule 40 when they unjustly dismissed Sheet Metal Worker J. D. Stringham from service following investigation held on October 5, 1983, at Richmond, California.

2. That accordingly, The Atchison, Topeka and Santa Fe Railway Company be ordered to compensate Sheet Metal Worker Stringham as follows:

   a) Restore her to service with all seniority rights unimpaired.

   b) Compensate her at pro rata rate of pay, eight hours (8') per day beginning October 24, 1983, continuing while being held out of service.

   c) Make her whole for all vacation rights;

   d) Pay Hospital Association dues or insurance for all time out of service;

   e) Pay her for all holidays;

   f) Pay her for all sick pay;

   g) Pay for all insurance premiums;

   h) Pay for all jury duty lost.

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 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.

In a letter dated September 6, 1983, the Claimant was notified to attend Investigation concerning her alleged accumulation of excessive demerits so as to determine the facts and place responsibility, if any, involving possible violation of Rule 31-H, General Rules for Guidance of Employes. The rule reads:

> "Employes' records will be balanced at least once each year, and more often when necessary, to keep records up to date in the matter of merits and demerits. A balance of sixty demerits subjects the employe to dimissal.
>
> Each employe's discipline record will be open for inspection by the employe, Division and General officers only, during business hours, at the office of the Supervisor where such records are maintained. If not practicable for an employe to go to the office, a transcript of the record will be sent to the employe upon application".

The Investigation was accorded on October 5, 1983, at which the Claimant and her Representative were present.

The Investigation disclosed that on August 10, 1982, the Claimant received 10 demerits for being absent from work without proper authority. On December 10, 1982 she received 10 merits for credit, having maintained a clear record for four months.

On April 5, 1983 the Claimant received 10 demerits for being absent from work without proper authority; May 2, she received 20 demerits for missing work and absent without leave; May 11 she received 20 demerits for being absent without leave. In each instance she signed waiver of Investigation.

In a letter dated May 17, 1983, the Claimant was notified that with the assessment of 40 demerits for being absent without leave her demerit standing was then at 50. She was also put on notice that should her demerit standing reach 60 she would be subject to dismissal for the accumulation of excessive demerits. She acknowledged receipt of the notice on May 20, 1983.

On August 29, 1983, the Claimant accepted 20 demerits, failing to report for duty at the assigned time on that date. She signed waiver of Investigation. This made a total of 70 demerits.

At the Investigation the Claimant explained that her absences, except the one on August 29, 1983, were due to her endeavor to get her deaf child, also afflicted with Cerebral Palsy, located in a school closer to her employment at Richmond, California. At the time the child was enrolled in a school in San Jose, California where she resided, approximately 75 or 80 miles from her work location.

The 20 demerits she received on August 29 grew out of her being late for work when she was stopped by the police and received a ticket.

The Claimant was notified of her dismissal on October 24, 1983, for violation of Rule 31-H.

The Organization has presented the Board with an abundance of reasons, both compassionate and procedural, in support of its position that the Claimant was not treated fairly and that she was unjustly dismissed.

Principal among those of compasion is that the Claimant was compelled to live the distance indicated from her work place until she could find a school closer for her child; that while Carrier Officers indicated willingness to help her, they did not do so and that her immediate Supervisor ignored her when she tried to explain the reason for her absence.

On the surface it would appear inconsiderate to say her situation was not legitimate. Even though she may have been a single parent, time to find more satisfactory accommodations on her scheduled days off among friends and relatives was surely available but, nothing was offered in her defense by her or her Representative at the Investigation in that regard.

On the other hand, the Claimant was notified each time that her explanations to her Supervisors were not acceptable, spanning a period April 5, 1983, to and including August 29, 1983. The demerits accepted on the latter date were of her own making and they triggered the Investigation that led to her dismissal. When asked about that date, she testified without qualification that the absence had nothing to do with relocating her child.

Treating the procedural contentions, we find that the notice of the Investigation met all the requirements of Rule 40. The Notice permitted her and her Representative to marshal her defenses.

In response to a comment by her Representative at the Investigation that he had completed his questioning of a witness unless the Claimant had some questions, the Investigating Officer stated that she could ask questions only through her Representative. While this was a narrow ruling, it did not materially flaw the case against the Claimant for her Representative asked a substantial number of questions and voiced several objections in her behalf. Our view of the Rule does not preclude an accused Employe from asking questions of those testifying against him or her.

More prominent of the procedural contentions are the charges of coercion. Principal of those charges centers on May 11, 1983, a date she received 20 demerits for being absent without leave. She and her Representative contended that she accepted the demerits on a promise that she would be paid for the day when her Representative at that specific time, Local Chairman Jarrett, indicated to her that she would be paid if she signed the Waiver of Investigation and accepted the demerits. That assertion was denied by the witness for the Carrier who added that she was not paid and that it was not promised.

The transcript is not clear as to whether Local Chairman Jarrett was or was not present. The attendance page does not show him as being present; although the Claimant's Representative at the Investigation responded in the opening questions that Mr. Jarrett would assist him. If Mr. Jarrett were present, he was not asked to testify in support of that assertion.

We do not find other charges of coercion or other procedural contentions to be meritorious, including the Organization's contention that the documents used by the Investigating Officer should have been made available to the Representative prior to the Investigation. An Agreement Rule in support of the latter contention was not cited.

We find that on the record as a whole, the discipline assessed was not arbitrary, capricious nor was it an abuse of managerial discretion. The Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 16th day of July 1986.