

The Second Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

(International Brotherhood of Machinists and Aerospace
Workers

PARTIES TO DISPUTE: (

(CSX Transportation, Inc. (Seaboard System Railroad)

STATEMENT OF CLAIM:

1. That CSX Transportation, Inc. violated Rule 30, but not limited thereto, of the current agreement when it unjustly dismissed Machinist Apprentice B. J. James following an investigation held on March 18, 1986.

2. That accordingly, CSX Transportation be ordered to reinstate Ms. James with seniority rights unimpaired, compensate her for all pay and benefits lost (made whole) as a result of said dismissal and remove all reference to the charges from her record.

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 employees 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 were given due notice of hearing thereon.

The Claimant was charged with chronic and excessive absenteeism, and following a formal investigation was dismissed from the service of the Carrier on April 14, 1986. The Organization contends that the Claimant was improperly withheld from service in January, 1985 and again in May, 1985 when she was ready, willing and able to perform her normal duties. Furthermore, the Organization contends that the Claimant did not receive a fair investigation.

As to the contention that the investigation was not fair, there is no substantiation for this in the record. There is no evidence that the Hearing Officer exhibited a predisposition against the Claimant. Charges in this matter were brought against Claimant by her supervisor. Furthermore, there is no evidence that the correspondence written by the Hearing Officer, the Shop Superintendent, to Claimant prior to the hearing compromised his investigative function.

Moving to the merits of this matter, it is clear that her supervisor was not aware of the contact between Claimant and the Carrier's medical office. Other than a telephone call between Claimant's supervisor and Claimant in late January, 1985, her supervisor had no knowledge of Claimant's ongoing medical problems. The Claimant made no effort to contact her supervisor and to keep him advised of her situation.

The letters from the Shop Superintendent and her supervisor that were mailed to an incorrect address, compounded this lack of communication. Nevertheless, Claimant bore the primary responsibility to keep her supervisor informed; for almost a year, Claimant's supervisor knew nothing of her whereabouts or her intentions to return to work.

In January, 1985, Claimant was instructed by the Carrier's Medical Officer that she could not be considered for return to services until her doctor reported that she no longer required medication. It must be concluded from the record that Claimant stopped taking that medication in early February, 1985, yet Claimant did not notify the Carrier. This matter is moot, given Claimant's other medical problems during this period. There is no evidence that Claimant was improperly withheld from service in January, 1985.

Again, in May 1985, Claimant attempted to return to work. Again, the Carrier's Medical Officer withheld approval based upon information provided by Claimant's doctor that indicated a history of sleep problems, alcohol abuse, depression and emotional agitation. In a letter to Claimant the Medical Officer wrote in part:

"I am unable to authorize your return to service unless you produce a satisfactory medical report from all your attending physicians and also information from inpatient hospital facility that you have successfully completed an accredited program for recovery from the disease of alcoholism and other substance abuse. If you so desire, you may contact our Alcohol and Drug Abuse Coordinator in the area to offer you any help or counseling that you may need."

"... any expense involved in obtaining these reports will of necessity be your personal financial responsibility."

Given the information contained in her doctor's report and the Carrier's knowledge of her history of alcohol abuse, it was not unreasonable for the Carrier to require proof of completion of a rehabilitation program and of satisfactory medical condition.

Compounding her situation, there is no evidence in the record that Claimant took advantage of the assistance available through the Alcohol and Drug Abuse Coordinator. Additionally Claimant assumed that the Carrier's Medical Officer required all of her medical records... in Claimant's case, truly a substantial and expensive task. However, this interpretation is not reasonably drawn from the Medical Officer's letter. Claimant did not attempt to contact the Medical Officer or the Coordinator to express her concerns.

Claimant was responsible for her long absence from work, primarily due to her continuing medical problems. Moreover, she failed to keep her supervisor properly informed. For its part, components of the Carrier did not effectively communicate with each other regarding the circumstance of Claimant's lengthy absence. As a consequence, Claimant's supervisor brought charges against Claimant without full knowledge of the circumstances.

Given the circumstances of this case, Claimant shall be returned to employment with the Carrier, with all seniority rights restored but with no backpay providing Claimant complies with the terms of the Medical Officer's letter of May 17, 1985.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of June 1988.