

 Award No. 19112
Docket No. CL-19454

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION
EMPLOYES**

THE BELT RAILWAY COMPANY OF CHICAGO

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6983) that:

1. The Carrier violated the Clerks' Agreement when on June 22, 1970, it terminated the services of Clerk DePatis.
2. Clerk DePatis shall be restored to service with seniority rights unimpaired and with payment for time lost June 22, 1970 and subsequent dates until restored to service.
3. For any month in which claim is here made for compensation on behalf of claimant involved, the Carrier shall also make premium payments on behalf of the claimant in the appropriate amounts required under Travelers Group Policy Contract GA-23000, as amended, for all benefits prescribed in that contract.

OPINION OF BOARD: The claim herein concerns solely the action taken by the Carrier as a result of the Claimant's absence on May 20, 1970. Although there is a great deal in the record concerning two other investigations involving Claimant's absences during other periods, the claim does not involve these proceedings or the discipline meted out as a result thereof. The Carrier, as well, narrows the issue when it states in its submission:

"* * * In the first place, Mrs. DePatis was NOT dismissed from service on the basis of total days absent, as the record will clearly show. Her dismissal from service resulted from being found guilty of the charges at the final investigation held June 12, 1970."

The nub of the Petitioner's case can be found in its statement in its submission as follows:

"The subject of this claim is based on unduly harsh and excessive penalty assessed against Claimant, specifically, the extreme penalty of discharge."

Leniency is a matter properly within the province of the Carrier. This Board has reversed Carrier's actions with respect to punishment administered to employees but only when it could reasonably be found from the record in the case that the Carrier was arbitrary and capricious and that the penalty was an abuse of discretion.

Turning now to the transcript of the hearing involving the absence on May 20, 1970 we find this testimony from the General Accountant, Claimant's supervisor:

"No sir. On both May 18 and 19 in the details that I mentioned above I advised her it would be wiser not to take the time off, due to her continual absentee record, and while it did not meet with my approval, she took the day off anyway."

The Claimant testified:

"On May 18 and 19 during my conversations with Mr. Hayes, he never definitely (sic) told me I could not go to my uncle's funeral on May 20, and stated that he thought that a wake would be enough, attending the wake would be sufficient respect in his opinion. More or less tried to discourage me from attending my uncle's funeral and called my absentee record to my attention, further stating that if I did attend the funeral another letter may follow."

The record shows the following statement from the General Accountant:

"During the two days of conversation we discussed the pros and cons of other than immediate family funerals. In pointing out her past attendance record, I told her it was quite possible that she would get another letter. Since I do not write the letters I could not be sure she would get one."

From the above it is clear that Claimant's supervisor did not approve of her absentsing herself nor did he specifically disapprove it. In other words he did not say "no" or "yes." He meaning was all too clear, however. He gave Claimant "fatherly" advice to the effect that she should not take the day off. His reference to the letter was merely another way of pointing out that Claimant's absence might lead to another investigation. At that time she was in the possession of two such letters notifying her of investigations concerning previous absences. The Claimant however decided on her own that the day off was more important to her than the "advice" given her by her supervisor. This Board finds that, in the circumstances of the case, noting that Claimant's seniority dated from August 21, 1969, that the penalty assessed cannot fairly be said to be arbitrary or capricious. Award 10429 (and cases cited therein). Accordingly, the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved here; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1972.