NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20086
THIRD DIVISION Docket Number CL-20060

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees
(St. Louis Southwestern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7212) that:

(1) Carrier violated the Clerks' current Agreement when it arbitrarily terminated seniority of Pamela Carter Bailey, Pine Bluff, Arkansas, November 29, 1971.

(2) That Carrier now be required to reinstate Pamela Carter Bailey to the service in Car Department with all rights, including seniority, vacation, sick leave, Health and Welfare rights, unimpaired, and, now be required to pay Claimant eight (8) hours each day, Monday thru Friday, five days per week, begiwing Wednesday December 1, 1971, and continuing likewise until she is allowed to protect Steno-Clerk position, Car Department, Pine Bluff, Arkansas. This to be in addition to any and all compensation already received while working in another department.

OPINION OF BOARD: Claimant's employment with Carrier was terminated for failure to comply with the provisions of Rule 26-2 (b), which require an employee to submit medical proof of need if he wishes to remain on sick leave beyond ninety (90) days. Claimant, with seniority date of June 1969, was terminated on November 29, 1971. She was re-employed by Carrier on December 8, 1971, and her present seniority coincides with that date.

The Claimant marked off on maternity leave on July 1, 1971. On November 24, 1971, she wrote to Master Mechanic W. J. Kugler stating that she was returning from leave of absence and that she wished to displace to a position which was advertised during her leave. By letter dated November 29, 1971, Master Mechanic Kugler advised Claimant that her displacement request would not be honored, that she had failed to comply with Rule 26-2(b), and that, therefore, she had forfeited her seniority. Thereafter, under date of November 30, 1971, the Claimant wrote the following letter to her Local Chairman:

> "On October 5, 1971, I talked with Mr. D. G. Perdue about my leave of absence. He asked me when I wanted to come back to work. I told him that it made no difference, but that I would like to stay off a while longer since my baby was so young. He said that would be just fine and that he would get it okayed with personnel.

"On November 4, 1971, I again talked with Mr. Perdue to discuss my job. He informed me that he had okayed it with personnel for me to stay off until December 1, 1971. I told him that was just fine and I would report to work December 1.

On November 24 I went to Mr. Perdue's office and took him my displacement letter on a job that had been advertised while I was on leave of absence. He told me to report for work December 1. On November 30 I received a letter informing me that I had been written out of service for failure to comply with Rule 26-2(b) of the current Agreed Rules.

I had no knowledge of this rule and have never been informed of it by anyone at any time."

Upon receiving a copy of this letter, the Carrier conceded that Claimant's Supervisor, Mr. D. G. Perdue, Chief Clerk to the Master Mechanic, did call the Personnel Department; however, the Carrier asserts that Mr. Perdue's inquiry was solely concerned with Claimant's status under the agreement when she returned to service. Carrier further asserts that, even if Mr. Perdue had granted Claimant permission to be off until December 1, 1971, Mr. Perdue's action would not serve to rectify Claimant's non-compliance with Rule 26-2(b).

The Employees contend that the Carrier's action constituted dismissal and that Claimant was entitled to an investigation under Rule 23 (discipline). The Carrier contends that the termination of Claimant was not a disciplinary measure and that its action was proper under Rule 26-2(b)

Rule 26-2(b) reads as follows:

"(b) An employee absent from work for reasons stated in paragraph (a), i.e., sickness, disability, maternity leave, et cetera, will furnish to the supervising officer proof of right to continued absence within ten (10) days after having been absent ninety (90) consecutive calendar days, or give satisfactory reason for not doing so, and within ten (10) days following each ninety (90) day period thereafter, such proof to be in the form of letter or statement from a reputable doctor to the effect that the employee's physical condition is such that he cannot perform his or her assigned duties. The supervising officer may, however, request such proof at any time to be furnished within ten (10) days following receipt of such request. An employee failing to furnish letter or statement from a reputable doctor as provided above will forfeit all seniority rights and be considered out of the service."

The issues raised by the foregoing, and the entire record herein, have been decided in Carrier's favor in three recent Awards of this Board. In those Awards, Nos. 19806 (this Referee), and 19904 and 19905 (Bergman), involving these same parties and this same Rule 26-2(b), arguments virtually identical to those presented herein were considered in depth and treated comprehensively in our accompanying Opinions. In discussing the meaning and effects of Rule 26-2(b) in Award No. 19806, this Board stated:

> "The plain sense of the above rule is that when an employee fails to comply with the proof requirements of the first two sentences of the rule, the third and last sentence is automatically invoked and, thereunder such an employee 'will forfeit all seniority rights and be considered out of service.' Further, from the record before us, there is no doubt that the above underlined text authorized Carrier's September 2, 1971 notice to claimant to furnish medical proof of illness within ten days; such proof was not furnished as required by the rule and, thereupon, the forfeiture provisions of the third sentence of the rule became applicable. Thus, we conclude that what occurred here cannot be regarded as having a disciplinary nature and, consequently, Carrier was under no obligation to conduct a Rule 23 investigation and hearing."

We reaffirmed the above ruling in Award No. 19905 (Bergman), wherein we stated:

> "On June 20, 1973, in Award 19806, this Division reached a decision as to the effect of Discipline Rule 23 **with** relation to Rule 26.2. We held that disciplinary action was not involved; that there was no need to conduct an investigation; that termination of the **employe** was 'self invoked' by the provisions of Rule 26.2, when the employe failed to comply with the requirements of the rule. Despite the Labor Member's dissent on the facts of that case, we shall follow our determination that Rule 23 does not apply and that no investigation is required."

We believe these prior Awards correctly differentiate between situations within the purview of Rule 26-2(b) and situations having a disciplinary nature and, consequently, we shall rule here, as in those prior Awards, that Carrier's action in terminating Claimant under Rule 26-2(b) did not require an investigation under Rule 23. This leaves only one other facet of the dispute to be considered, namely, whether an excusable reason existed for Claimant's non-compliance with Rule 26-2(b). In this regard we have carefully studied Claimant's letter of November 30, 1971, in conjunction with Carrier's statements relative thereto. We believe the Claimant's letter shows that, at best, she contends that Mr. **Perdue** had obtained the Personnel Department's approval of a leave extension through December 1, 1971. She does not contend that Mr. **Perdue,** himself, authorized the leave extension. Therefore, when verification of the extension was not forthcoming from the Personnel Department, the fact

is established that an extension was not authorized and, in consequence, what happened between Claimant and Mr. Perdue is left in an inconclusive state. Further, the Claimant does not contend that her conversations with Mr. Perdue touched upon, or in any way dealt with, her need to comply with Rule 26-2(b); so, even if she had obtained the extension, this alone would not have relieved her of the requirements of Rule 26-2(b). As we have pointed out in the above cited Awards, the provisions of Rule 26-2(b) are self-invoking and the seniority forfeiture provisions are automatically triggered by an employee's failure to timely submit the requisite medical proof. The unfortunate fact is that, as Claimant stated, she had no personal knowledge of the rule Rule 26-2(b). Her lack of personal knowledge does not affect the situation, however; the agreement rule had been circulated and every employee is charged with knowledge of the contents of the Agreement.

In view of the foregoing we shall deny the claim.

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 Employes involved in this dispute are respectively Carrier and Employes eithin 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 herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1974.