

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **22299**  
Docket Number CL-22364

Louis Yagoda, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station **Employees**  
PARTIES TO DISPUTE: (  
(**Elgin**, Joliet and **Eastern** Railway Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(GL-8510) **that:**

1. The Carrier violated the effective Clerks' Agreement when following an investigation held on January 28, 1976 it dismissed Ms. Cheryl L. **Holley from** its service effective February 2, 1977;

2. The Carrier shall **now** return Ms. Holley to its service **with** her seniority and all other rights **inimpaired**; shall compensate her for all **time** lost as a result of this dismissal from service and shall clear her record of the charges placed against her by **the** Carrier.

**OPINION OF BOARD:** We find that on the basis of knowledge available to it and subjected to examination by means of appropriate investigation affording due process, Carrier was justified in concluding that:

1. Claimant's attendance record was seriously deficient.
2. Although these absences were in significant part based on allegations of illness, it was shown **that** Claimant's physician had released her to return to work effective **November** 25, 1976 without any restrictions.
3. Claimant remained out of work and unavailable for work during the period **November** 14, 1976, to and including December 14, 1976 (a total of 17 of the 22 regularly scheduled work days). Reasons given by her were her **own** illnesses and that of her child.

4. Claimant stated that she did not agree with her personal physician's diagnosis and prognosis of her state of health.
5. Claimant refused **the** Carrier's Chief Surgeon the opportunity to contact her personal physician to determine her medical status prior to or at the time of the investigation.

However, after Carrier had dismissed Claimant from its service (on February 2, 1977, on the basis of an investigation held on January 28, 1977) a stat-t was submitted to Carrier under date **of March 4, 1977, by a physician specializing in obstetrics and gynecology, in which he stated that his examination of Claimant on February 28, 1977, and examination of Claimant by himself and two colleagues in March, 1977 revealed symptoms attendant on possible pregnancy which "could very well" affect Claimant's physical capability to perform her work competently.**

Given this belated revelation of medical possibility of justification for **much of the** absence involved, we believe it appropriate that, without weakening Carrier's right to continue to give due future weight to Claimant's past failure to protect her work **assignments** without **having** furnished **contemporaneous** and **appropriate** justification therefor, Claimant be restored to her position, without pay for time lost.

**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** 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 herein; and

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That the Agreement was violated.

A W A R D

Claim sustained to the extent and in the manner set forth in Opinion. Accordingly, Claimant shall be reinstated to her former position within twenty (20) days after receipt by the parties of this Award, without payment for time lost.

NATIONAL RAILROAD **ADJUSTMENT** BOARD  
By Order of Third Division

ATTEST:

*A.W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of **January 1979**.