

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22408  
Docket Number CL-22354

Robert A. Franden, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, **Freight Handlers,**  
( **Express** and Station **Employees**

PARTIES TO DISPUTE: (

(Indiana **Harbor** Belt Railroad **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood  
(GL-8516) that:

(a) The Carrier violated the Rules Agreement, effective December 1, 1949, revised **January**, 1958, when it assessed discipline of dismissal on Clerk Shirley Wyse following a hearing held in absentia on December 7, 1976.

(b) The discipline imposed was arbitrary, capricious and discriminatory. Claimant's record should be cleared of this charge and her seniority restored.

OPINION OF BOARD: Claimant, in this dispute, had been granted a 30 day leave of absence which was **scheduled** to **expire** on November 26, 1976. On November 19, 1976, claimant requested a 60 day extension of her leave of absence, **which** was **denied** by Carrier. On November 26, 1976, claimant was examined by a Carrier medical officer and approved for return to service. However, she persisted in her request for an extension of the leave of absence because "**my** child does not sleep well *during the night*, **I feel** that I need the additional time off." She was advised by **her** supervisor on November 26th that her request for extension could not be granted and that she was instructed to report for her assignment on November 29, 1976. After claimant failed to report for work on November 29, 1976, she was ordered, on November 30, 1976, to report for an investigation on December 7, 1976, relative to her:

"\* \* \* failure to comply with instructions of your supervisor, in *that* you did not report to duty at the expiration of your leave of absence as ordered on Friday, November 26, 1976. On that date, you were again instructed to return to duty on November 29, 1976 at 8:00 AM, at which **time** you again failed to report."

Claimant requested a postponement of the investigation which request was denied by Carrier.

Claimant failed to appear for the **investigation**.

Carrier has raised a threshold procedural contention in this case alleging *that* the claim as presented to our Board was not properly or timely handled on the property citing Award No. 20974 of this Division involving the same parties as precedent for this argument.

We have compared the fact situation in these two cases and cannot agree with Carrier. The issue which properly resulted in dismissal Award No. 20974 concerned the presentation to this Board of a monetary claim in connection with an appeal from discipline by dismissal, which claim had **not** been presented or progressed on the property. In this case, the subject as handled on the property and before our Board concerns itself with **only** the restoration of **claimant's** seniority. This subject is properly before the Board and will be decided on its merits.

The evidence of record in this case is substantial in support of the action taken by Carrier. After the requested extension of the leave of absence was denied on November 19, 1976, claimant then procured a statement from her physician dated November 22, 1976 which said:

"This is to verify that the above patient has recently adopted an infant, and due **to, chronic** fatigue, and exhaustion, it is advisable, *that* the patient remain at home, **indefinitely** **[sic]**."

In Award No. 13941 of this Division we find:

"There **must** be a termination to an adversary proceeding and the parties bear the responsibility of protection of their respective interests. The situation herein presented is analogous to a party failing to appear at a trial in a civil action set for a day certain, whereupon the court enters judgment on the pleadings or **ex parte** evidence. We find, in the light of the facts of record, Carrier did not violate the Agreement in proceeding to decision in the absence of Claimant."

In this instance, claimant appeared at Carrier's offices, was examined by Carrier's medical examiner and adjudged "Qualified" for return to service. There is nothing in this record to indicate that claimant was physically unable to appear for the scheduled investigation on December 7, 1976. While Carrier's denial of the requested postponement of the investigation may not be a classic example of good labor relations, it is not, in this instance, a fatal flaw. An employe cannot prevent the holding of a fair and impartial hearing by the simple expedient of staying away after due notice has been made without proof that the absence was justified

There was substantial evidence adduced at the investigation to warrant the finding that claimant was guilty of the offense charged. We cannot substitute our judgment for that of the Carrier where, as here, the charges have been substantiated. The claim must 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 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:

  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of May 1979.