

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22662
Docket Number CL-22826

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(
(The Washington Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8754) that:

(1) The Carrier violated the Rules Agreement effective July 1, 1972, particularly Article 15(b) **(3)**, when it arbitrarily dismissed Clerk Denise Ashley from **service** on January 13, 1978, allegedly **in** accordance with Article 14 of the Agreement.

(2) Claimant Ashley's record be cleared of the improper action brought against her.

(3) Claimant Ashley be restored to service with seniority and all other rights unimpaired and be compensated for wage loss sustained in accordance with the provisions of Article 18(c). Claimant also to be **made** whole for any money she was required to spend for medical and hospital services, or other benefits which would otherwise have been covered under Travelers Group Policy GA-23000.

OPINION OF BOARD: **Claimant** had been in Carrier's service about three years as clerk and at the time of the occurrence giving rise to the dispute here involved was assigned as Inventory Control Clerk.

At the completion of claimant's assigned tour of duty on January 13, 1978, she was advised by the Assistant **Manager-Stores** Manager by Certified Mail, Return Receipt requested, which letter **was** sent to two addresses that she had on file with the Carrier, as follows:

"Our records indicate that you have failed to report for duty since January 9, 1978.

"In accordance with the provisions of Article 14 of the current working Agreement between The Washington Terminal Company and The Brotherhood of Railway, Airline and Steamship **Clerks**, Freight Express and Station **Employes**, this will advise that effective this date, you are hereby dismissed and removed from the rolls and seniority roster of The Washington **Terminal** Company for absenting yourself without permission for a period of five (5) days."

Both the letters were ultimately returned to the Carrier and marked "**unclaimed.**"

The record contains a statement signed by William H. **Waidman**, Storekeeper, dated January 12, 1978, reading:

"In reference to Denise Ashley - Employee **#02106** - who is a Material Control Clerk in the Storekeepers Office, Smith Building, Coach Yard, she reported to the Storekeeper's Office via telephone on December 30, 1977, that she would not be into work, that she was ill. Again on January 3, 1978, she called and said she was still ill and would not be in. **On** January 4, 1978, she again called and said that she had the flu and would not be in on that day, she also called on January 5, 1978 saying she would not be in on the 5th or 6th of January, but, would report for work January 9, 1978. I informed Mrs. Denise Ashley that on her return to work on January 9, 1978, she would need a 'Return to Duty Slip' from The Washington Terminal Doctor, plus a Certificate from her own physician.

"I have not heard any further from Mrs. Denise Ashley since she called on January 5, 1978."

Paragraph (a) of Article 14 of the applicable Agreement provides:

"(a) Employees absent from duty for a period of 5 days without permission will be considered as having left the service and forfeited their seniority."

In its submission to the Board the Petitioner contends that Carrier violated the applicable Discipline **Rule** of the Agreement by not affording claimant a fair and impartial hearing. The Board does

not agree with the contention of the Petitioner. Paragraph (a) of Article 14, quoted above, is self-executing and does not require handling under any other rule of the Agreement. The Carrier's actions were in accordance with the rule.

As we have decided the case on its merits, it is not necessary to pass upon the procedural issues raised.

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

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 14th day of December 1979.