NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23352

THIRD DIVISION Docket Number CL-23469

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9291) that:

(1) The Missouri-Kansas-Texas Railroad Company violated the current Rules Agreement between the parties, DP-451, including but not limited to Rules 26, 27 and 28, when on May 1, 1979, at Denison, Texas, it dismissed Ms. B. J. Washington from service without just cause, did not advise her of the precise reasons for same, was not fair and impartial in the handling of the matter, did not prove in the record that her actions were efforts to obtain an extended leave of absence through fraudulent means, then failed to afford independent consideration at each level of appeal.

(2) Carrier shall immediately reinstate Ms. B. J. Washington with her seniority, vacation, insurance and all other employe rights restored unimpaired, clear her service record of the charges and discipline assessed in this case and grant her a medical leave with permission to return to work when her physical condition permits, and pay her for any time lost as a result of Carrier's actions.

OPINION OF BOARD: Under the Agreement in effect on this property, if the Carrier decides that an employe warrants discipline, such discipline is applied and the employe involved then requests an investigation, if one is desired.

The claimant herein was the regular occupant of Cashier Position No. 89, Customer and Station Accounting Bureau, General Office Building, Denison, Texas, with a seniority date in that district of August 23, 1974.

On May 1, 1979, claimant was notified by Auditor-Revenue, J. C. LaGrone:

"Reference to your letter of April 30, 1979, requesting a 60 day medical leave of absence supported with alleged copy of letter from Dr. Guy H. Gross.

"We have made investigation of your request and have determinedthatthe statement attached to your above letter, allegedly signed by Dr. Gross is a forgery and was not written by or on behalf of Dr. Gross or by any authorized individual; therefore, your request for leave of absence is an effort on your part to obtain an extended leave of absence from this company through fraudulent means.

"These actions constitute violations of company rules set forth in Circular DP-2 dated November 23, 1973 and reissued January 1, 1975, parts reading:

D(4) dishonest and K(1) making false... reports or statements.

"This letter is notice to you in accordance with Rule 26 in Agreement D. P. 451 that for your violations of company rules by the above described actions, you are hereby dismissed from the services of the Missouri-Kansas-Texas Railroad Company effectiveimmediately."

The claimant requested an investigation, which was postponed and finally held on May 23, 1978. A copy of the transcript of the investigation has been made a part of the record. We have carefullyreviewedthe transcript and find that none of claimant's substantive procedural rights was violated in the investigation or in the appeal of the claim on the property. Claimant was present throughout the investigation and represented.

The letter written to the claimant on May 1, 1979, was clear and specific. The statement of Mr. LaGrone in the investigation could not properly be considered "heresy" (hearsay). He was relating his conversation with Dr. Gross and members of Dr. Gross's staff. Also, the introduction of written statements into the investigation without the writers thereof being present was not in violation of the agreement. Such procedure has been upheld in numerous decisions of this Board.

There was substantial evidence adduced at the investigation, including the claimant's admission, that the statement allegedly signed by Dr. Gross, referred to in the letter of May 1, 1979, to claimant, was a forgery committed by claimant. Under the facts as developed, the Board does not find the Carrier's action to be arbitrary, capricious or in bad faith. There is no proper basis for this Board to interfere with the action of the Carrier.

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

Claimdenied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1981.