

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24819
Docket Number CL-24370

Edward M. Hogan, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9519)
that:

Carrier violated the agreement at Atlanta, Georgia, when on April 28, 1980, it dismissed Ms. P. W. Burger for an alleged failure to protect her assignment as Data Processing Typist, April 13 through April 28, 1980, and for conduct unbecoming an employee.

For this violation, Carrier shall now be required to compensate Ms. P. W. Burger for eight hours' pay on April 28, 1980, and with the same compensation for each and every assigned workday thereafter until she is restored to service with all rights unimpaired.

OPINION OF BOARD: Claimant was dismissed from the service of the Carrier on April 28, 1980, prior to a formal investigation which was held on May 16, 1980. By letter dated May 22, 1980, the Claimant was advised that the formal investigation affirmed the prior dismissal. The Claimant had been dismissed for failing to protect her assignment and for conduct unbecoming an employee.

The Organization argues that the Carrier has violated Rule C-1 and Rule D-1 of the controlling Agreement in that the charges levied against the instant Claimant were not specific and did not comply with the terms of the Agreement, and further, that the Claimant complied with the applicable provisions of the controlling Agreement with respect to procedures for marking off as sick. Lastly, the Organization contends that the Claimant could not have been found guilty of "conduct unbecoming an employee" under the facts as presented at the formal investigation.

The Carrier argues that the investigation was fair and impartial, that the record clearly demonstrates that the Claimant was proven guilty on the charges of failing to protect her assignment and conduct unbecoming an employee. Furthermore, the Carrier argues that this Board should not substitute its judgment for that of the hearing officer, absent evidence of an arbitrary, capricious or discriminatory behavior or an abuse of managerial discretion.

This case is not a pleasant matter for us to decide. Evidence on the record indicates that during the pertinent dates in question, the Claimant had attempted to commit suicide. It is not clear that the events involved in this instant dispute are associated with that event, however, this Board is not unmindful of the facts as presented.

This Board's careful and thorough review of the record indicates that the Claimant was justifiably found guilty of failure to protect her assignment. Numerous decisions of this Division, and other divisions of this Board, have held that failure to protect one's assignment is a dismissable offense.

"The employment relationship and contract itself are premised on the understanding that employees will perform the work for which they are employed. The bulletins which describe the duties of each job also set forth the days on which employees are expected to perform these duties." Third Division Award 18387 (Rosenbloom).

"The Carrier has a right to expect punctual, regular attendance at work assignments as a minimum." PLB 868, Award 41.

"Every employee has an obligation and duty to report on time and work his scheduled hours." Second Division Award 6710 (Dolnick).

"The Carrier is entitled to insist on reasonable attendance." Second Division Award 7348 (McBrearty).

In our review as to whether or not the discipline is assessed in the case before us was excessive, we cannot so hold. In fact, Referee Dennis stated in Second Division Award No. 8769:

"Normally, these actions would not be grounds for permanent separation from Carrier's employ. But this is not the first time that Claimant has been disciplined for absenteeism and unauthorized absences. He has been disciplined on four previous occasions."

We find the exact same situation in the case before us. The Claimant's record is replete with numerous notations of unexcused tardiness and absenteeism. In fact, the Claimant has been formally disciplined on several occasions with respect to the exact same charges she faced at the formal investigation in the instant dispute. Therefore, we cannot find that the discipline as assessed to the Claimant at bar was excessive or unwarranted. No Carrier, nor any employer, could run a safe and efficient operation if employees did not respect their duty and responsibility to report on time and regularly to their assigned duties. The relationship between any employer and any employee is one in which there are duties and responsibilities placed upon each party. Prompt and regular attendance lies at the heart of these mutual duties and responsibilities and should be expected in any normal employee/employer relationship. (See also Third Division Awards 20227, 16268 and 18550.)

Lastly, we must also conclude that the Claimant received an impartial and fair investigation. In the case before us, we find that the Carrier has not acted in an arbitrary, capricious or discriminatory manner, nor has there been evidence of an abuse of managerial discretion in the handling of this dispute. This Board clearly cannot substitute its judgment for that

of the hearing officer absent any of the reasons which have heretofore been cited. It is the hearing officer who is present at the formal investigation at which time he/she can examine all the evidence and the demeanor of all witnesses. It is the formal investigation, not subsequent review by this Board, that is the true trier of fact. We are in no position to weigh the evidence presented or assess the credibility of testimony of witnesses. Absent a showing of arbitrary, capricious or discriminatory behavior or an abuse of managerial discretion, this Board clearly cannot substitute its judgment for that of the hearing officer. Our review of the entire record of the case before us provides us with no grounds in which to upset the findings and assessment of discipline as imposed. (See also Second Division Awards 7348, 6706, and 5049; also, Third Division Awards 21282, 22065, 21004, 18129, 10974, 21612, 20331, 1667889 and 23329.)

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 Employee involved in this dispute are respectively Carrier and Employee 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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 16th day of May, 1984