

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25237
Docket Number CL-25267

Eckehard Muessig, Referee

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

PARTIES TO DISPUTE: (

(Georgia, Southern and Florida Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9808**) that:

Carrier violated the Agreement at Macon (**Brosnan** Yard), Georgia, when, on November 12, 1981, it dismissed Ms. N. K. Hunnicutt from service without pay.

Carrier shall now be required to restore Claimant Hunnicutt to service, with seniority and all other rights unimpaired, and compensate her for all time lost.

OPINION OF BOARD: The Claimant herein was marked off sick, beginning September 5, 1981. On October 30, 1981, she was instructed by the Carrier to furnish within 5 days medical certification of the necessity to remain marked off. On November 12, 1981, the Claimant was dismissed from the service on the basis of the Carrier's determination that she had failed to comply with the instructions contained in its October 30th letter. Subsequent to an investigation on November 30, 1981, the Carrier determined that the dismissal would be upheld.

On a procedural issue, Carrier contends that the claim was not appealed within the time limits contained in the controlling Rule. The Board is not persuaded on ~~the~~ record to dispose of the case on that basis. The Carrier's contention was challenged on the property and became an issue. Moreover, the record made on the property contains no evidence of who was "****the officer of the Carrier authorized to receive****" claims initially.

With respect to the merits, and basic to our ultimate finding, is the fact that the Claimant was under medical care for bronchial asthma during the entire period here involved. Treatment included medication prescribed by her Doctor which produced drowsiness, impaired normal activity, and influenced driving ability.

Concerning the key issue of whether the Claimant responded within five days as required by the Rule, the Board notes the evidence of record that the Claimant contacted the Carrier on November 6 and 9, at which time she expressed a desire to see a Carrier Doctor for an examination. Given that the record does not show when the October 30 letter was mailed **or** received, the Claimant's response was made within a reasonable period. **In** sum, while the Board concludes that discipline was warranted, because of the circumstances (particularly as noted above), we view the time held out of service as sufficient discipline to impress upon Claimant the necessity for strict and prompt compliance with instructions of proper authority. The Division has consistently held that failure to comply with legitimate instructions may lead to dismissal. Therefore, the Claimant is cautioned that future failure on her part to comply with the Carrier Rule could well support dismissal.

Accordingly, Claimant is restored to service with seniority unimpaired, but without pay, conditioned upon a physical examination and physical ability to satisfy Carrier's requirements for service.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL 'RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.

