

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26062
Docket Number MW-26325

John W. Gaines, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The dismissal of Track Foreman J. Titlow for alleged 'Violation of Rule "I" on March 11 and 12, 1984' was without just and sufficient cause, arbitrary, on the basis of unproven charges and in violation of the Agreement (System File NEC-BMWE-SD-903D).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired, her record shall be cleared of the charge leveled against her and she shall be compensated for all wage loss suffered."

OPINION OF BOARD: Claimant, following a Hearing, was dismissed on June 6, from the position of Foreman of work Gang M-532 for falsifying the time documents for members of her work Gang.

Carrier considered documentary and corroborated evidence that Claimant submitted time charges on the Gang's time sheets, of 8 hours on March 11 and 12, 1984. Claimant and Gang had worked less than 8 hours, appreciably less, on each of those days of their assignment.

Claimant disputed procedures, testimony, and violations, however, Carrier had substantial evidence to support its determination that Claimant was guilty of the violations charged.

Malfunctioning tapes caused the Hearing to be continued. We find this continuance brought out no substantial variance nor anything new. The continuance to another day was appropriately conducted to preserve Claimant's substantive rights.

In assessing the discipline imposed here, Carrier was proper in considering Claimant's service record. Over the two years just past, a significant number of warnings and suspensions appear in her record including disciplines assessed Claimant for unauthorized absenteeism and for marking off early.

The guilt established here is moral turpitude. The resulting punishment of dismissal, under the further circumstances of the state of Claimant's past record, is not disproportionate in our opinion.

Claimant and her Representative appeared and made their presentations before the Referee.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 8th day of July 1986.

