

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26087  
Docket Number CL-25922

Lamont E. Stallworth, Referee

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9907) that:

(a) Sister Brenda Ann (Bowens) Avery should not have this discipline assessed of thirty (30) days overhead suspension and her record should be cleared of this charge of not protecting her assignment for the period October 8 through 12, 1980.

(b) Brenda Ann (Bowens) Avery should be found not guilty and her record cleared."

OPINION OF BOARD: Claimant was charged with being absent without proper permission on the dates of October 8-12, 1980. Following an Investigation held on October 23, 1980, Claimant was assessed discipline of thirty (30) days overhead suspension by letter dated October 29, 1980. That letter stated in part:

"The Board concludes, upon reviewing all relative facts and testimony that there was sufficient reason to support charges against you of not protecting your position on the dates October 8 thru 12, 1980.

Yours truly,  
G. Workman"

The record shows that Claimant called in on October 2, 1980 at 8:15 A.M. and marked-off from service account the death of her father. She was off October 2-5, 1980 and then observed October 6 and 7, rest days. She was paid October 2-4, 1980 under Rule 59, Compassionate Leave. She was not charged for October 5th due to her father's funeral not being held until October 6th. Claimant was then off October 8-12 observed October 13 and 14, rest days. She called in at 11:45 A.M. on October 13 for assignment on October 15th. It is admitted that Claimant did not contact anyone of authority to request extended bereavement time or advise of her need to be off work between October 2 and 13.

The Organization contends that Claimant did not get a fair and impartial Hearing as mandated by Rule 27 and further that the purpose of the Carrier Investigation was to discipline Claimant for her past work record.

This contention is partially based on the fact that Claimant's immediate Supervisor, G. Workman, issued the charges, approved of the Investigative Board's Findings, assessed the charges and was the Officer to whom the first step of Appeal was directed.

In considering these procedural due process arguments, there are several Third Division Awards that address the issues. Third Division Award 20077, involving the same parties as the instant dispute held:

"Petitioner first asserts that claimant was not afforded a fair and impartial hearing and further that his claim was not given unbiased consideration in its handling on the property. This argument is based on the fact that Superintendent Talbert signed the charge against Claimant, conducted the investigation, rendered the dismissal decision, and also was the designated officer to whom the first step of the appeal was directed. The record of the investigation, the Rule cited and the Awards of this Board do not support this position. The Superintendent was not a witness in this case and a long line of decisions by all the divisions of this Board have held that a Claimant's rights are not necessarily jeopardized by the same Carrier official filing the charge, presiding at the hearing and later imposing the discipline. In this case the further function of the same official as the initial recipient of the appeal is similarly not prejudicial."

Also, in this connection, Third Division Award 24476 held:

"In numerous cases dealing with procedural due process issues, we consistently held that it was not improper for a Carrier official to assume a multiplicity of roles viz the investigative hearing process when the Grievant's rights are not adversely affected. Thus, we held that it was permissible for a Carrier official to write and serve the investigative notice, conduct the final investigation and assess discipline based upon the record evidence. These three roles per se, in the absence of palpable trial misconduct, are not viewed as precluding an employee's right to a fair and impartial investigation."

Thus, in a comparable situation, the Third Division Awards do not support the contention that the various functions served by the same Carrier Official in the Investigative process, preclude Claimant's right to a fair and impartial Hearing. In the instant case, the Board sees no violation of the standard of fairness set forth in Rule 27.

The Organization also contends that Rule 27 provides that the Investigation and decision will be confined to the specific charge and that Carrier's introduction of Claimant's past work record over the Organization's objection, disclosed a history of absenteeism which prejudiced the Investigation of the specific charges.

Rule 27 states in pertinent part:

"(a) An employee who has been in the service sixty (60) days or more, or whose application has been approved, will not be disciplined or dismissed without investigation. He shall have a fair and impartial investigation at which he may be represented only by one or more duly accredited representatives of his own choice. An employee may, however, be held out of service pending such investigation. When necessary to call an employee to the office for investigation, he will be called at such time as will not cause him to lose time and, if possible, not cause him to lose rest.

An employee will within a reasonable time prior to the investigation be apprised in writing of the specific charge or charges against him, with copy to the Local Chairman, and will have reasonable opportunity to secure the presence of necessary witnesses and duly accredited representatives. The investigation will be held within ten (10) days from date charges with the offense or held out of service (unless an extension of time is agreed to between the proper Officer and Local Chairman). The investigation and decision will be confined to the specific charge or charges, and the decision will be rendered within ten (10) days after completion of the investigation. All investigations will be in writing unless mutually agreed otherwise between the Management and Local Chairman. Two (2) copies of the transcript will be furnished the duly accredited representatives of the employees on request."

A careful review of the record by the Board indicates that the Carrier in the instant dispute fully complied with the provisions of Rule 27.

Carrier properly raised Claimant's past discipline for absenteeism on the property. The Claimant, at the Hearing, admitted receiving a letter marked personal dated June 24, 1980 from G. Workman, which states:

"According to my records, you have been absent since Jan. 14, 1980 the following number of times:

Due to Sickness:	14 days
Due to sickness of child:	5 days
Unable to get babysitter:	1 day
Total	20 days

Please be advised that further absences due to sickness of other members of the family or absent account unable to get babysitter cannot be allowed. Disciplinary action will be necessary if you do not protect your job properly.

G. Workman"

It was on her testimony that Claimant submitted the Rules for calling in. We also note from the record under the heading "Vacation Relief Clerks" the following:

"As car location information center is a 24-hour operation, seven days a week we have set up certain guidelines for all employees:

1. If necessary to be off due to illness, call the Supervisor as early as possible on extension 3277 or 3278.
2. In order to return to work from an absentee due to illness, you must mark-up at least 2 hours prior to returning to work.

G. Workman

Statement by the Board.

In item 1, pen corrections have been made to change 'If necessary to be off due to illness' to 'if necessary to be off for any reason'.

In item 2, pen corrections to eliminate or change 'in order to return to work from an absentee due to illness' to 'in order to return to work you must mark-up at least 2 hours prior to returning to work' scratching out from an absentee due to illness."

When asked why the changes were marked in pen, Claimant responded:

"Because where it says if necessary to be off and gives the number, it says due to illness, but Mr. Towers says it means if necessary to be off for any reason. That is why the changes are made in pen."

Notwithstanding Claimant's testimony that she was unaware that Compassionate Leave was limited to three (3) consecutive work days, the Board is of the Opinion that Claimant was on notice as of the June 24, 1980 letter that absences other than personal illness would not be allowed. In addition, the Board finds that the Carrier had a good reason to be concerned about additional absenteeism at the end of her three (3) days Compassionate Leave, i.e. October 8. The record in this case shows Claimant has had three prior 30-day suspensions for absence from duty without permission which suggests that suspensions have had no corrective effect on her conduct.

Furthermore, there is no denial in the record that Claimant was absent on account of sickness or personal reasons a total of 36 days between January 14 and the Hearing date, October 28, 1980.

The Organization's principal defense to the discipline imposed is that Claimant was absent with permission; that she was not advised that absence beyond a particular date would be considered as absence without permission; that she was sick on the dates in question; that she furnished a medical excuse upon her return and that she followed proper procedures for reporting to work on October 15.

The record clearly shows that Claimant did not contact any departmental authority to ask for extended bereavement time or advise of her need to be off work.

Furthermore, Claimant testified that she did not contact a doctor until October 10th, when she obtained a Return to Work Form for October 15. The Board notes that Claimant offered no explanation for her absence October 8 and 9.

The Organization argues that historically and traditionally it has been the practice to grant permission to remain absent for an indefinite period of time following a death in the family.

The Organization argues further that absent any restrictions by a Carrier Representative at the time Claimant notified Carrier of her fathers' death, Claimant had permission to be absent for an unspecified amount of time.

Carrier emphatically denied such practice and contends there is not any such provision in the Agreement that entitles an employe to extend Compassionate Leave without securing permission. Moreover, no evidence was presented to substantiate that such a practice was ever established.

Accordingly, the Board concludes that Claimant was absent without permission by her own admission and absent any evidence that she was treated differently than other Employees absent without permission, the Board finds that the discipline imposed was warranted.

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

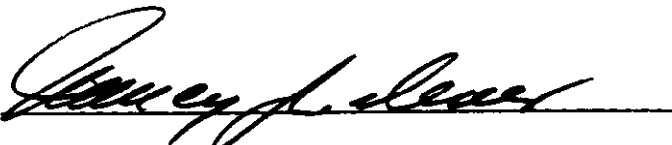
That the Agreement was not violated.

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 31st day of July 1986.