

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26187
Docket Number CL-26568

Charlotte Gold, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Belt Railway Company of Chicago

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood
(GL-10026) that:

(1) Carrier violated the effective Clerks' Agreement when, following an investigation held on September 13, 1984, it dismissed Ms. Arlene C. Miller from service effective September 20, 1984;

(2) Carrier shall now restore Ms. Miller to service with her seniority and all other rights unimpaired; shall compensate her for all time lost, including any potential overtime; and shall clear her record of the charges placed against her."

OPINION OF BOARD:

On August 27, 1984, Claimant, a Clerk in Carrier's Car Operations Department in Chicago, Illinois, was issued the following Notice of Investigation:

"Arrange to report to the Supervisor of Car Operations Office, Car Operations Building, 6900 South Central Avenue at 11:00 AM, August 31, 1984, for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your failure to comply with the Current Sick Leave/Personal Leave Allowance Absenteeism, Memorandum of Agreement, Rule 62-1/2 paragraph (q) effective January 1, 1983, between the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and The Belt Railway Company of Chicago. After receiving Appendix letters, A, B, C, D of this Agreement and accumulating one hundred (100) demerits pursuant to Rule 62 1/2 you are being charged with continued unauthorized absence. The accumulation of dates listed below indicates an excess of five per cent (5%) unauthorized absenteeism from your work assignment and position as a clerical employee during the third calendar quarter of 1984:

August 1
August 2

August 15
August 23

If you desire a representative, please arrange."

As a result of the Investigation, Claimant was found guilty as charged and dismissed from Carrier's service effective September 20, 1984. The Organization's appeal of that decision was denied and the Claim has been advanced to this Board for a final determination.

Carrier argues that Claimant was in fact guilty of excessive absenteeism and that the penalty imposed was appropriate. Carrier adhered to the requirements of Rule 62 1/2 (Sick Leave/Personal Leave Allowance-Absenteeism), following progressive steps in the educational/disciplinary process. Claimant had accumulated one hundred demerits and continued to accumulate unauthorized days of absence beyond the 5 percent limit. It further argues that on July 29, 1984, Claimant was allowed to return to work after a two-week period of convalescence. She marked off sick on August 1, 2, 15, and 23, but these absences were without permission because they were not of a significant duration and Claimant failed to provide acceptable medical evidence to show that she had suffered a serious illness on those dates. Given Claimant's exceedingly poor record, it argues the penalty of dismissal was appropriate.

The Organization argues that Claimant was in fact ill on the dates in question and therefore was not guilty of unauthorized absenteeism. An employee who is legitimately ill is not required to obtain permission to be absent. Further, Claimant was not advised that her absences were improper prior to being charged. Claimant may or may not have been legitimately ill in the past, but her past record has no bearing in this instance because the present charges have not been proven. For all these reasons, the Organization argues, the Claim should be sustained.

In reviewing the record of this case, the Board notes that Claimant was twice offered reinstatement to Carrier's service on a leniency basis with full seniority and record intact. This offer was contingent on the provision that a continuation of Claimant's past absenteeism would not be tolerated.

This Board must conclude that Claimant would have been well advised to accept that offer. The record shows that Claimant did fail to provide acceptable evidence to indicate that she had suffered a serious illness on all of the dates in question and that proper evidence was clearly required in this instance.

Claimant's past attendance, adjudged by any standard, is poor. There comes a time in the employment relationship when an employer may be justified in terminating an employee who is absent an excessive amount of time, even for the most valid of reasons. While employers are bound by certain obligations to their employees, so too do these employees have an obligation to be available for work on a regular basis.

By this Award, we are returning Claimant to work with seniority and all other rights unimpaired, but without backpay.

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. Dyer - Executive Secretary

Dated at Chicago, Illinois this 24th day of November 1986.