

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26468
Docket Number MS-27083

Paul C. Carter. Referee

PARTIES TO DISPUTE: (Terrye S. Bendau
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM:

"1. Carrier violated the Agreement at Kansas City, Kansas, when it removed Terrye S. Bendau from its service as result of investigation held on May 30, 1984, and

2. Terrye S. Bendau shall now be reinstated to Carrier service with all rights unimpaired and compensated for all time lost as result of being removed from service."

OPINION OF BOARD: The Claim herein was submitted to the Board by the Claimant, as Petitioner.

The record shows that following a formal Investigation conducted on May 30, 1984, on the charge of Claimant allegedly reporting for work under the influence of alcoholic beverages at 11:55 P.M., April 7, 1984, Claimant was notified on June 14, 1984, of her dismissal from service. Claimant had a seniority date of September 23, 1974, on Carrier's Eastern Lines Mechanical Department Seniority Roster.

Following **Claimant's dismissal**, Claim was initiated on her behalf by representatives of the Organization representing the craft on the property, requesting that Claimant be reinstated to Carrier's service with all rights unimpaired and compensated for all time lost as a result of being removed from service. The Claim was progressed in the usual manner up to and including the Carrier's highest designated officer of appeals and denied.

The Board has reviewed the Transcript of the Investigation conducted on May 30, 1984. We find that the Investigation was properly conducted and that substantial evidence was presented in support of the charge. **Severe** discipline was warranted; however, on the facts of record, we consider permanent dismissal excessive.

The Board would have been inclined to award that Claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost. **However**, the record shows that prior to Rebuttal Submissions being filed with the Board, Claimant passed away on September 29, 1986. Under these circumstances, the Board has no alternative but to deny the Claim for **backpay** and dismiss the Claim for reinstatement as moot.

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

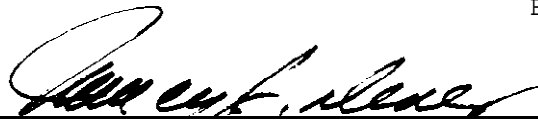
That the Agreement was not violated.

A W A R D

Claim denied and dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of September 1987.