

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10143) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Topeka, Kansas, on September 23, 1985, when it removed Janice M. Scott from the seniority roster of the Revenue and Customer Accounting and considered her out of service for failing to report to duty after expiration of leave of absence per Rule 21-C, and

(b) Claimant Janice M. Scott shall now be compensated for eight hours' pay each day from and including September 23, 1985, forward until returned to work, plus all fringe benefits she is entitled to under the existing agreements as a result of such violation of Agreement rules."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Claimant was at the time of the incident that gave rise to this case, employed by Carrier as Clerk in Revenue and Customs Accounting Department in Topeka, Kansas. She held a seniority date of May 10, 1978. Claimant began a maternity leave on July 5, 1985. It was to terminate on September 2, 1985, but Claimant was granted an extension of that leave until September 22, 1985. She was scheduled to return to duty on Monday morning, September 23, 1985. Claimant did not report to work on that day nor did she notify the Carrier of her reason for not reporting.

On the afternoon of September 23, 1985, Carrier notified Claimant by mail that in accordance with Rule 21-C of the Agreement, she was considered out of service account of her failure to return to duty at the conclusion of her leave.

Claimant contends, however, that she called her office prior to September 23, 1985, in an attempt to explain why she could not report on September 23, 1985, and that ultimately she went to a Company office and sent a letter via Carrier mail to explain her absence. She intended that the letter would arrive in Topeka on September 23, 1985. Carrier contends that it did not receive any phone calls or correspondence at that time. Claimant was then notified that she was held out of service and her name was removed from the seniority roster.

The Organization contends that Carrier acted in an arbitrary and capricious manner in this instance and that before Rule 21-C can be applied, more investigation than took place in this instance is required.

Rule 21-C provides:

"An employee who fails to report for duty at the expiration of the leave of absence shall be considered out of service, except that when failure to report on time is the result of unavoidable delay the leave of absence will be extended to include such delay."

This Board, after a thorough review of the record, is persuaded that the circumstances of this case demanded that Carrier investigate the facts prior to issuing a letter removing Claimant from service. Claimant failed to report to work as scheduled on the morning of September 23, 1985. By afternoon, Carrier sent Claimant a certified letter telling her she was out of service. When Claimant called her office after receipt of the letter, she was told she was to be held out of service and she was not allowed to return to work. Claimant's reasons for not returning to work as scheduled was that her baby sitter was taken ill at the last minute and a substitute could not be found in time to allow Claimant to report as scheduled. This Board concludes that Rule 21-C allows for such an unavoidable situation and should have been given some consideration by Carrier. The Board also concludes that Claimant could have made a better effort to contact her Supervisor and explain why she could not report prior to September 23, 1985. She was aware of the situation on September 20, 1985. She had three days to make a personal contact with someone in authority.

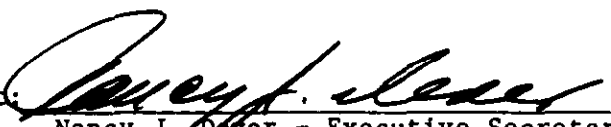
This Board has concluded that Rule 21-C is a self-implementing rule and that it does allow for leeway in some situations. We think this instant case is an example of one of those situations. We are not, however, compelled to hold the Carrier fully responsible for what took place here. The Claimant did not completely hold up her end of the bargain. She could have done more to meet the requirements of Rule 21-C. We therefore conclude that, under the circumstances of this case, it is appropriate to restore the Claimant to service, with seniority and all other rights unimpaired, but without backpay or benefits.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 30th day of August 1988.