

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10174) that:

(a) Carrier violated the current Clerks' Agreement at Temple, Texas, when on April 25, 1986, it unfairly and improperly removed S. A. VonGonten from the service of the Carrier, and

(b) Facts developed at the formal investigation held on April 25, 1986, failed to sustain Carrier's charges and did not justify or warrant the harsh and severe penalty imposed, and

(c) S. A. VonGonten shall now be restored to service with all rights unimpaired and paid for all monetary loss in wages sustained as a result of being dismissed from service and her personal record cleared of all charges, and

(d) Claimant S. A. VonGonten shall be paid an additional twelve per cent per annum on the anniversary date of this claim until claim is paid."

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 waived right of appearance at hearing thereon.

Claimant was employed as an off-in-force-reduction employee at Temple, Texas. On March 19, 1986, Claimant was notified to attend a formal investigation of the charge:

"you misrepresented the facts and/or withheld information in connection with a letter received by General Claims Agent R.D. Eschenburg from the law firm of Jones and Granger of Houston, Texas, advising that that firm represents you in connection with an incident of injury which allegedly occurred to you while on duty at Temple, Texas, on April 19, 1985, so as to determine facts and place responsibility, if any, involving possible violation of Rules 2, 14, 16, 30 and 31B, General Rules for the Guidance of Employees, Form 2626 Standard."

The hearing took place on April 23, 1986, and as a result, Claimant was removed from service. The Organization thereafter filed a claim on Claimant's behalf, challenging her dismissal.

This Board has reviewed the procedural claims raised by the Organization, and we find them to be without merit.

With respect to the substantive issue, this Board finds that there is sufficient evidence in the record to support the finding that the Claimant was guilty of the rule violations with which she was charged.

The alleged on-duty injury to the Claimant occurred on April 19, 1985, and the Claimant never reported the injury to the Carrier. Nearly one year later, on March 17, 1986, the Carrier received its first notice of the alleged injury when the claim department reported that the Claimant's attorney had filed a claim. The Claimant had a responsibility of reporting any on-the-job injury right after it happened, not nearly one year later.

Moreover, the evidence revealed that the Claimant falsified facts relating to the alleged injury.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find the action of the Carrier to have been unreasonable, arbitrary, or capricious.

In the case at hand, the wrongdoing of the Claimant is so severe that it cannot be considered unreasonable for the Carrier to have terminated the Claimant's employment. Therefore, the claim must be denied.

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Award No. 27947  
Docket No. CL-27892  
89-3-87-3-436

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.