

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

PARTIES TO DISPUTE: (Transportation Communications International Union  
(  
(Soo Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10256) that:

1. Carrier's action in the dismissal from service of Ms. A. M. Clancy, Clerk-Typist, Chicago, IL, effective November 16, 1984, was excessive, arbitrary and capricious.

2. Ms. A. M. Clancy shall have her record cleared of all charges which have been placed against her as a result of this case.

3. Ms. A. M. Clancy shall be reinstated to the service of the carrier with seniority and other rights unimpaired.

4. Ms. A. M. Clancy shall be compensated for all wages and other losses sustained account her dismissal."

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.

It was alleged in the Carrier's charges against the Claimant that she failed to protect her assignment, vacated her position without authority and was insubordinate. Following a formal Investigation held on November 15, 1984, Claimant was found guilty and dismissed from service to the Carrier.

In representing the Claimant the Organization requested and was granted an appeal Hearing. Carrier subsequently reaffirmed its decision to dismiss the Claimant. During further progression of this Claim on the property, the Carrier proposed a reinstatement of Claimant without compensation or eligibility for a separation offer. The Carrier proposal was not accepted.

The Board finds no violation of Rule 22 of the Agreement in that the Rule does not prohibit the Carrier from an Investigation as conducted herein. Although the Organization argues that Claimant did not receive proper notice, the record substantiates that Claimant failed to notify Carrier of her new address until after the Investigation. Carrier cannot be held responsible for Claimant's failure.

This Board's review of the record finds substantial probative evidence to support the Carrier's finding of guilt. She reported to work late and under flextime procedures was required to work until 6:00 P.M. Claimant said she would not work past 5:00 P.M. Claimant requested first that she be docked the time and thereafter stated she would get sick. Claimant then requested a leave of absence and after denial preceded to leave. Thereafter she was instructed to complete her required shift until 6:00 PM. which she refused. Claimant left her position at 5:45 P.M.

The Board finds that Claimant was afforded a fair and impartial Investigation. The probative evidence supports the Carrier's findings of guilt.

The only question left for this Board's consideration is the imposed discipline. The Board notes that Claimant was offered reinstatement on August 25, 1986, and the offer was not accepted. We also note that there is no record of any previous infractions. While the Board does not condone the Claimant's behavior, it finds the discipline unduly harsh under the instant circumstances. The Board will now reinstate the Claimant with seniority and all other rights unimpaired, but without backpay. Claimant should have accepted the Carrier's offer when it was first made.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1989.