

The Third Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10333) that:

1. Carrier violated the effective agreement when, following an investigation on March 31, 1988, it dismissed Ms. Fannie R. Moore from its service without just cause.

2. Carrier shall now rescind the discipline assessed, shall compensate Ms. Moore for any time lost as a result of this action and shall clear her record of the charges placed against her."

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 employees 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.

The Claimant, having been off duty for an extended period, presented a release from her physician stating she was capable of returning to duty. She was given a return-to-work physical examination on September 18, 1987. The Carrier's Medical Director wrote to the Claimant on September 22, 1987 as follows:

"A urine drug screen was done as part of your return to work physical. As you have been notified, the results showed positive.

Your are hereby held off work until such time as your drug screen is negative. You have the following choices:

1. If you feel you have a problem, you may make use of the Elgin, Joliet & Eastern Railroad's Employee Assistance Program which is through Gateway Rehabilitation. To contract them call 800-472-4488.

2. You may go to your own private doctor.

If you choose to go to your own doctor, you must return with a note from him saying your results are negative, as well as a copy of the drug screen (sic) he did. At that time we will repeat the drug screen and if it is negative, we will approve you for work."

When nothing was heard from the Claimant, the Medical Director wrote to the Claimant on February 26, 1988, as follows:

"On September 22, 1987, you were sent a letter by me, copy of which is attached for your information.

In that letter you were given two alternatives. As of this date you have not complied with the instructions of the letter. Accordingly, you are directed to comply with the directions given you in the letter of September 22, 1987 and submit such to this office on or before March 7, 1988."

When no reply from the Claimant was forthcoming, the Carrier directed her to appear for an Investigative Hearing, which was conducted on March 31, 1988. As a result of the Hearing, the Claimant was dismissed from service for her violation of Rule 700. That Rule reads in pertinent part as follows:

"Employees who are insubordinate . . . will be not be retained in service."

The Organization initiated a Claim on behalf of the Claimant. During the Claims handling procedure, the Carrier determined to permit the Claimant to return to work as of October 24, 1988.

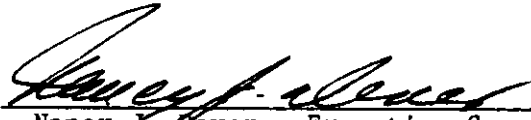
For the period from the Claimant's dismissal until October 24, 1988, the only medical report from the Claimant's physician was that she continued to be "totally incapacitated" for work. In view of this, there are no grounds to find that the Claimant was deprived of work or pay during this period. Thus, the Claim is found to be moot, and the Board is not required to make any determination as to other phases of the Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of August 1990.