Mark 3rd Div
Oct 17, 1990
Adopt Session

Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28593
Docket No. CL-29118
90-3-89-3-561

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10407) that:

(CARRIER'S FILE NO. TCU-D-3042/TCU FILE NO. 393-D9-003-D)

Claim of the General Committee of the Brotherhood that:

1. Carrier, acting arbitrarily, violated Rule 24 and other related rules of the Agreement when, by notice of December 22, 1988, it assessed discipline of termination from service against Claimant, Ms. Angela Hernandez.

2. Carrier shall now reinstate to service with seniority rights unimpaired and compensate Claimant an amount equal to what she could have earned, including but not limited to daily wages, overtime and holiday pay, had discipline not been assessed.

3. Carrier shall now expunge the charges and discipline from Claimant's record.

4. Carrier shall now reimburse Claimant for any amounts paid by her for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by Carrier."

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.

At the time of the incident that gave rise to this case, Claimant was employed as a Reservation Clerk in Carrier's Los Angeles Reservation Office. She had worked for Carrier for over six years. On December 16, 1988, she was notified by Carrier to report for an Investigation into charges that she had been in violation of Rule "O" of the Rules of Conduct. Claimant was charged with being late, over extension of breaks, and leaving early on fifteen occasions between November 16, and December 14, 1988. A Hearing was held in the matter on January 13, 1989. As a result of that Hearing, Claimant was found guilty as charged. Based on the finding of guilt and Claimant's past record of discipline, she was terminated from Carrier's service.

This Board has reviewed the record and has concluded that Claimant received all rights guaranteed her by Agreement and that she is guilty as charged. The Board, however, does have some question about the validity of termination, given the facts as contained in the record.

The Organization has argued in this case that Carrier did not follow its own policy of progressive discipline and that it treated Claimant in a more severe manner than it did other similarly situated employees.

As to Carrier's progressive discipline policy, the Board has concluded that when Claimant, the Organization's representative, and a Carrier Official signed the December 1, 1988 waiver, Claimant was placed on a discipline ladder of her own. She agreed that further incidents of misconduct could result in termination. The time to have complained about those terms was before the waiver was signed and not after.

As to some employees being treated differently than Claimant at the Los Angeles Facility, this Board is not inclined to substitute its judgment for that of Carrier's on that point. The Board views this case as a separate issue. Based on the entire record, it is persuaded that while severe discipline is appropriate, termination may be a more severe action than is required in this case. We therefore conclude that Claimant should be returned to work on a last-chance basis. Claimant must be aware that she is obligated to appear at work every day, on time, work her full shift, and not extend breaks beyond established time limits. If she does not, Carrier will be more than justified in terminating her. Carrier has a right to expect its employees to be regular in attendance and perform efficiently while on duty. Carrier is not obligated to maintain people in its employ who do not.

There was considerable discussion before the Board in this case concerning the use of counseling by the Carrier. The Board thinks some comments concerning counseling are appropriate. It is generally accepted in labor-management relations that counseling of an employee by a Supervisor is in the nature of an instructional educational session, not a disciplinary session. In the context of a discipline ladder, counseling should not be considered the first step. If an employee is disciplined for having broken a rule after having been counseled about the rule in the past, the employee is to be considered a first offender and no more.

In conclusion, Claimant is to be returned to work on a last-chance basis with seniority, and all other rights unimpaired, but without pay for lost time 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1990.