

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29809
Docket No. CL-30639
93-3-92-3-430

The Third Division consisted of the regular members and in addition Referee Robert G. Richter when award was rendered.

(Transportation Communications International Union)
PARTIES TO DISPUTE: (
(CSX Transportation, Inc. (formerly
(Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10817) that:

1. Carrier acted in an arbitrary, capricious and unjust manner when, without just cause, it dismissed Clerk Anna M. Anders from service of the Carrier on August 22, 1990.
2. As a result of such arbitrary, capricious and unjust action Carrier shall return Clerk Anna M. Anders to service of the Carrier and pay her the rate of Position 082A-005, Bill Clerk, rate of \$120.20 daily from the date of dismissal until date of return and further Carrier will be required to pay for any loss of health and welfare benefits; any loss of guarantee payments due; and, be reinstated with full seniority from the date of dismissal to date of reimbursement including any and all sickness, vacation and/or other benefits provided by the Clerks' General Agreement."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 regularly assigned to the Joint Facility Billing Department in Baltimore, Maryland. On August 13, 1990, she was instructed to report at 9:00 a.m., August 21, 1990, for a formal Investigation:

"...to develop the facts, and determine your responsibility in connection with your failure to properly and timely perform the work and duties of your position and your failure to follow the specific instructions of both your immediate supervisor and your manager over the period of June 29 through August 9, 1990."

The Investigation was held as scheduled. Following the Investigation the Claimant was dismissed from the Carrier effective August 22, 1990.

Claimant was also involved in a disciplinary action earlier in 1990 which resulted in a 30-day suspension reduced by this Board to 15 days for being guilty of similar charges.

After a careful review of the transcript we find the Investigation was conducted in a fair and impartial manner. Claimant was present and although declining representation was allowed to question the witness. The District Chairman was also present at the Investigation and was offered the opportunity to question witnesses.

Claimant has over 21 years of service. Until late in 1989 or early 1990 she apparently had an excellent record with no disciplinary actions on her record. Beginning in 1990 Claimant started experiencing difficulties in performing her work assignments. This record is void of any information as to why this change in behavior occurred. The record does indicate the Local Chairman tried to involve the Carrier's Medical Department, but apparently to no avail.

The transcript of the Investigation supports the Carrier's conclusion that the Claimant did not properly perform her duties.

However, the Board finds that dismissal in this case is too harsh for an employee who has over 21 years and only one previous discipline. Claimant shall be reinstated with seniority and all other rights unimpaired, but without pay for time lost providing she meets the medical requirements of the Carrier.

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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.