

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29812
Docket No. CL-30703
93-3-92-3-633

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

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10851) that:

1. Carrier violated the effective agreement when, following an investigation held on December 6, 1991, it dismissed Ms. F. R. Moore from its service effective that date;
2. Carrier shall now return Claimant to service with her seniority and all other rights unimpaired, shall compensate her for all time lost 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 employes involved in this dispute are respectively carrier and employe 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 had been off duty because of personal illness beginning on July 21, 1991. On October 29, 1991, Carrier sent a letter to Claimant ordering her to report for an Investigation:

"...relative to the charge that you violated General Regulation 700 governing clerical employees when you allegedly concealed

material medical information regarding your physical condition at the time you presented yourself as fit to return to work on or about January 24, 1991."

Following a series of postponements the Investigation was held on December 6, 1991. As a result of the hearing, Claimant was dismissed.

A review of the transcript reveals the Claimant received a fair and impartial Investigation which was held in a timely manner.

A review of the record reveals that the Claimant had been off work since July 21, 1990, because of personal illness. On January 23, 1991, she attempted to return to work furnishing the Carrier with a statement that she was able to return to work. As a result of Claimant's legal action against an individual who had rear-ended her in an automobile accident, the Carrier received information the Claimant was permanently disabled. The information was received by the Carrier on October 4, 1991.

The reason the Claimant was not working was a result of the aforementioned auto accident. The record is clear that Claimant submitted information that she was able to return while at the same time medical information indicated she was permanently disabled. The information supplied in January, at best, was incomplete and in violation of the Carrier's Rules.

Based on the record, this Board finds that the Carrier did not act in an arbitrary or capricious way when it dismissed the Claimant. We will deny the claim.

A W A R D

Claim denied.

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.