

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30251
Docket No. CL-30773
94-3-92-3-582

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman 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 Union (GL-10848) that:

- 1) Carrier violated the provisions of Rule No. 24 when, on April 16, 1991, it held Claimant Barbara Duarte from service pending a disciplinary investigation.
- 2) Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule No. 24 of the Agreement, when by notice of May 8, 1991, it assessed discipline of "termination from service" against Claimant, pursuant to an investigation held on April 29, 1991.
- 3) Carrier shall now reinstate Claimant 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, holiday pay and overtime, had she not been held from service and had discipline not been assessed.
- 4) Carrier shall now expunge the charges and discipline from Claimant's record.
- 5) 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 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.

At the time of the incident leading to Claimant's dismissal, she was a Commissary Worker at Carrier's property in Los Angeles. On April 12, 1991, Claimant advised her Supervisor and the General Supervisor of the Commissary that a plastic jar of fruit she had been carrying dropped on her ankle, causing an injury to the ankle. The General Supervisor gave Claimant an injury report to fill out and directed her to the Boyle Heights Industrial Medical Clinic for examination by a doctor.

The Clinic physician found no evidence of injury and released Claimant to return to work. Upon her return from the Clinic, Claimant was informed that she would be held out of service pending the outcome of the drug test administered during her Clinic visit. She was also told that she would be paid for the days she was held out until the results of the drug screen were released. Claimant then left Carrier's property.

On April 16, 1991, Claimant reported to the Carrier to determine her status and determine if she had been paid for the time held out from service. At that time, she was informed that she was being withheld from service pending an Investigation. On that same date, Carrier directed Claimant to report for an Investigation involving three charges. Two of the charges and a portion of the third were subsequently withdrawn. The remaining charge read, in pertinent part, as follows:

"Violation of Rule[.]... 'F' (Section 1) of the National Railroad Passenger Corporation Rules of Conduct, in that on Friday, April 12, 1991, at approximately 11:20 a.m. you reported to General Supervisor Daniel W. Baker that [a bottle which fell through the bottom of a carton you were carrying]... caused injury to your person when, in fact, no injury was incurred."

Following the Investigation, Claimant was notified that she was dismissed from the Carrier's service.

The only witness to Claimant's alleged injury is Claimant herself. None of her fellow employees saw the alleged incident. The physician to whom she initially reported, and the Clinic to which she later presented herself in the hopes of attaining a "second opinion" found no evidence whatsoever of injury. Accordingly, there is substantial support on the record before the Board to support the Carrier's finding that Claimant's report was false.

We are in agreement with Third Division Award 23530 which found as follows:

"The falsification of an on-duty injury report is a serious matter. It represents an attempt by Claimant to recover wages or benefits not properly due [her]. It is, in essence, a theft of Carrier property, compensation, which does not belong to the Claimant."

In light of the fact that Claimant had been found guilty of a similar violation less than two years prior to this incident, and in view of the seriousness of the offense, we find: 1) that the Carrier reasonably withheld Claimant from service pending the investigation; and 2) that the penalty of dismissal in this case is not excessive.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Linda Woods
Linda Woods - Arbitration Assistant

Dated at Chicago, Illinois, this 8th day of June 1994.