

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32027
Docket No. CL-32633
97-3-95-3-547**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11177) that:

- 1. Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement, when by notice of September 3, 1993, it assessed discipline of 'Termination from Service' against Claimant Fatima Najja, pursuant to an investigation held on August 27, 1993.**
- 2. 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 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 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 were given due notice of hearing thereon.

At the time of her dismissal, Claimant had been assigned as a Reservations Sales Agent, at Carrier's Western Reservation Sales Office. By letter of July 28, 1993, she was directed to report for a formal Investigation into the following charge:

"CHARGE: Violation of Rule 'O' of the Amtrak Rules of Conduct in that as a Reservation Sales Agent at the Western Reservation Sales Office, you allegedly did not report for duty at the designated time and place, was late for (sic) for your assignment, and or departed before the end of your assignment as follows:

July 3, 1993:	Absent entire assignment.
July 7, 1993:	Arrived 2 minutes late from first break. Arrived 2 minutes late from second break. Departed 2 hours, 24 minutes before end of assignment.
July 10, 1993:	Absent entire assignment.
July 15, 1993:	Arrived 1 hour, 19 minutes late for start of assignment.
July 16, 1993:	Arrived 4 minutes late for start of assignment. Departed 27 minutes before end of overtime assignment.
July 24, 1993:	Absent entire assignment."

The Investigation was held on August 27, 1993. Following the Investigation, the Hearing Officer notified Claimant of his decision, stating in part:

- "3. Your testimony seemed to connote that you did not dispute the alleged absences and lateness as stipulated in the charge, but rather offered explanations as to why you did not report for duty at the designated time and/or place.
4. Although your statements regarding your health condition were noted, you did not offer any documentation for the record, nor did you show that you were on an approved medical leave of absence or *had approval to be tardy on the dates in question....*"

Claimant was assessed the discipline of termination from service, effective immediately. The discipline was appealed through the normal channels, including the highest Carrier officer authorized to handle such matters. Following conference on the property, it remained unresolved.

It is the position of the Carrier that it has met its burden of persuasion in this case. Carrier notes that there is no dispute whether Claimant was absent or tardy on the dates contained in the statement of charge (*supra*). Claimant did not dispute her absences but attempted to mitigate them by asserting that her health condition was the *main reason for her absences*. Carrier points out that Claimant did not come forward with a medical certificate until long after the Hearing. Even at that point, she provided Carrier with only a statement that she had visited a doctor's office on June 7, 1994. The doctor's note did not stipulate that she was unable to work on the dates listed in the letter of charges.

The Organization maintains that the Claimant's record does not rise to the level of excessive absenteeism, and that Carrier's assessment of discipline disregarded Claimant's illness and her efforts to be a responsible employee. The Organization points out that Claimant followed proper procedures and reported via telephone each time that she would not be available for work on the dates presented in the statement of charge. Such reporting, acknowledged by the Carrier employee with whom she spoke, constitutes permission to be absent on the dates in question. Thus, she should not now be punished for following proper procedure. In support of its position, the Organization notes that Special Board of Adjustment No. 1056, Case 10, held that an employee's obligation concerning attendance must "be balanced against the reality that employees are human and that human beings become unable to work from time to time because they are sick or injured."

While this Board recognizes that illness or injury may be a mitigating factor in an employee's attendance record, in the instant case Claimant's prior record does not incline us to accept that Claimant's illness excuses her multiple absences and tardiness in so short a period of time. Before Carrier resorted to the ultimate penalty of dismissal, Claimant was counseled, given a formal reprimand, assessed a three-day deferred suspension and a six-day actual suspension. Claimant clearly was on notice that continued incidents of poor attendance and/or tardiness could result in her dismissal. Further, absent assurances to the contrary, a simple confirmation by Carrier that it understood she would be absent does not constitute either condonation or approval of that absence. Thus, it is not accurate to suggest that Claimant was "blind-sided." Accordingly, under the circumstances, the Carrier's assessment of discipline was neither excessive nor arbitrary.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 6th day of May 1997.