

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33271
Docket No. MS-34288
99-3-97-3-886

The Third Division consisted of the regular members and in addition Referee William E. Fredenberger, Jr. when award was rendered.

(Candace Riley

PARTIES TO DISPUTE: (

(Southern Pacific Lines Union Pacific Railroad

STATEMENT OF CLAIM:

“The crucial issue herein at stake is: Was petitioner disabled during her absence from railroad? Given that solid and consistent evidence provides an affirmative answer to this question, it should be concluded that petitioner was wrongfully terminated from service.

Petitioner seeks reinstatement, with payment of lost wages. In a subsidiary fashion, she seeks relief in the form of compensation, also including lost wages.”

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.

By letter of November 18, 1994 the Carrier notified Claimant, who then held a Clerk's position at the Carrier's facility in Monterey Park, California, to appear for

formal Investigation in connection with numerous specified absences from August 12, 1994 through August 17, 1994 and an alleged application for disability benefits under false pretenses in connection with which Claimant allegedly requested the Carrier to provide statements to an insurance company, all in violation of specified Carrier Rules. The Investigation was held on November 29, 1994. Claimant did not appear at the Investigation, and it was held in absentia. By letter of December 7, 1994 the Carrier notified Claimant that evidence adduced at the Investigation supported her guilt and that she was dismissed from the Carrier's service.

The Transportation Communications International Union, the Organization representing Claimant in connection with her employment, grieved the discipline. The grievance was denied. The Organization appealed the denial to the highest officer of the Carrier designated to handle such disputes. However, the dispute remains unresolved, and it is before the Board for final and binding determination.

At the outset the Carrier raises a number of procedural objections with respect to the claim in this case. However, the Board believes the most appropriate way to address the claim is to proceed directly to the merits without addressing the procedural issues.

The claim herein is based solely and exclusively upon the contention that Claimant was disabled during the events which formed the basis for her dismissal from service. For this reason, the Claimant urges, her dismissal should be set aside, and she should be made whole for any losses suffered as a consequence of such dismissal.

The Board must render its decision based upon the record below. Claimant did not attend the Investigation, and no issue was raised at the Investigation with respect to her disability. Assuming, arguendo, that the issue of Claimant's disability was raised properly after the Investigation, this is not the forum in which to adjudicate the merits of that defense. As the Carrier pointed out during the appellate process, the claim is more in the nature of a cause of action under the Americans With Disabilities Act. The Board has no jurisdiction to adjudicate that matter. Claimant's rights and responsibilities under that statute are defined by it and are not appropriately matters for consideration on appeal before the Board. Based upon the record produced on the property there is nothing to conclude that Carrier's dismissal of Claimant was inappropriate.

Accordingly, the Board concludes that the claim in this case is without merit.

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 1999.