

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 33597
Docket No. CL-33432
99-3-96-3-950**

The Third Division consisted of the regular members and in addition Referee Edwin H. Benn when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Illinois Central Railroad**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11539) that:

- (1) Carrier violated the Agreement between the Parties when effective Saturday, October 7, 1995, it dismissed Console Operator Walter M. Manley from service, in violation of Rules 22, 23, 24, and 25, among other Rules.**
- (2) Carrier shall now be required to restore Mr. Manley to service with full benefits and all seniority rights unimpaired; and**
- (3) Claimant shall now be compensated full back pay for all time lost, including health and welfare premium payments, plus any additional holiday pay and overtime pay he would have received had he been in service; and**
- (4) Carrier shall clear Mr. Manley’s work record of all matters pertaining to this investigation.**

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 relevant time, Claimant, an employee since March 1970, held a Console Operator's position in the MIS Department. As a result of notice dated September 28, 1995, Investigation held October 3, 1995 and by letter dated October 6, 1995, Claimant was dismissed from service for being excessively absent during the period of August 18 through September 21, 1995 and for violating a personal contract dated December 27, 1994.

Claimant's shift was from Midnight to 8:00 A.M. Claimant's duties included monitoring the Carrier's computer system, changing computer tapes, printing and compiling reports and restarting the computer systems in the event of crashes.

Substantial evidence supports the Carrier's determination that Claimant was excessively absent during the period of August 18 through September 21, 1995 — five separate occasions and in excess of three hours on two other days. Those absences occurred even though Claimant signed a letter dated December 27, 1994 where Claimant agreed, among other things, that he would be regular in attendance.

However, we find that dismissal was excessive. Claimant is a long term employee and, until the circumstances that brought about the signing of the December 27, 1994 letter, it does not appear that Claimant was a problem employee. Under the circumstances, Claimant shall be returned to service without loss of seniority or other rights and benefits. However, Claimant shall not be entitled to backpay for the time he has been out of service. Claimant's discipline shall be considered a long term suspension. Claimant shall further be required to pass a return-to-work physical examination.

Claimant must understand that the Carrier and the Board will not look favorably upon similar conduct in the future. If Claimant has medical or other problems he must

advise the Carrier and request a Leave of Absence instead of simply not showing up for work. Claimant's job is an important one and his failure to appear for work can seriously handicap the Carrier by depriving it of the necessary computer reports needed for its operations.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 16th day of November 1999.