

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 35399
Docket No. CL-36253
01-3-00-3-476

The Third Division consisted of the regular members and in addition Referee Rodney E. Dennis 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-12628) that:

1. The Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement, when by notice of February 1, 1998, it assessed discipline of “Termination From Service, Effective Immediately” against Claimant Diedre Burke, pursuant to an investigation held on January 26, 1999.
2. The Carrier shall now reinstate Claimant Diedre Burke 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.

Claimant D. Burke was employed by the Carrier as a Reservation Sales Agent at its Western Reservation Sales Office in Riverside, California. She was hired in 1987 and, until 1998, when she was charged with three separate incidents of not attending to duties, she had a clear disciplinary record.

In 1998, she was charged on three occasions with being unplugged from her computer and the reservation telephone system during her scheduled shift. Each of the three incidents resulted in discipline. The first two were suspensions; the third, (the instant case) was a discharge from service. The two suspensions were not fully adjudicated and have been held in abeyance pending the outcome of this case.

On November 18, 1998, the Claimant was directed to report on November 27, 1998, for a formal Investigation in connection with the following charges:

“CHARGE I: Violation of Amtrak’s Standards of Excellence, that part titled ATTENDING TO DUTIES, which reads in part:

‘. . . you have an obligation to perform your duties properly and in accordance with the standards set for your particular job. This requires that you remain alert to your duties at all times. Any activity or behavior that distracts or prevents you or others from attending to duties is unacceptable. It is also important for all of us to report to work on time and perform our duties during our assigned hours.’

When you allegedly did not perform your duties during your assigned hours, having vacated your job without permission as follows . . .”

The charge letter contained twenty-two incidents on six days between October 14 and 28 when the Claimant was alleged to be unplugged from the reservation phone system without permission. The unplugged time on these specific days amounted to over 220 minutes.

A Hearing in the matter was held on January 26, 1999. As a result of that Hearing, the Claimant was found to be guilty as charged and was dismissed from the Carrier's service. The specifications involving two of the six dates cited in the Charge Letter were withdrawn by the Hearing Officer in his decision letter. The Claimant's dismissal, therefore, was based on being absent from her work station without permission on numerous occasions on four separate days in October 1998, for a total of approximately 161 minutes. A transcript of the Hearing has been made a part of the record reviewed by the Board. As a result of that review, the Board has concluded that the Claimant received a full and fair Hearing and was afforded all guaranteed rights due her under the Agreement. It has also concluded that no dispute exists concerning the amount of time the Claimant was "unplugged" from the reservation system. What is at issue here is whether the Claimant was productively employed performing business-related duties "when she was unplugged from the system or whether she was, as the charges state, not attending to her duties as a Reservation Clerk."

Based on the total record before the Board, it has concluded that the Claimant was fully aware of the requirement for Reservation Clerks to remain plugged into the computer and the reservation telephone system when they were not on authorized breaks. In the months before her dismissal, the Claimant was disciplined twice for the same or similar Rule violations.

In spite of the Board's conclusion that the Claimant was guilty as charged, the Board does not conclude that dismissal is an appropriate remedy in this instance. It is our conclusion that the Carrier can make its point in this case with a long suspension and a return of the Claimant to work on a last-chance basis. The Claimant had ten years of unblemished service prior to the problems she encountered in 1998 that led to her dismissal. These ten years of good service should not be for naught. The Board therefore directs that the Claimant be returned to work on a last-chance basis with seniority intact and all other rights unimpaired, but without pay for lost time or benefits. The Claimant should be made aware that any further incidents of being unplugged from the system in violation of the Special Instructions governing the performance of Reservation Sales Agents can result in her permanent dismissal from service.

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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 26th day of April, 2001.