

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 37524  
Docket No. TD-37928  
05-3-03-3-351**

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

**(American Train Dispatchers Association  
PARTIES TO DISPUTE: (  
(BNSF Railway Company**

**STATEMENT OF CLAIM:**

**“The Burlington Northern Santa Fe Company (hereinafter referred to as “the Carrier”), violated the current effective agreement between the Carrier and the American Train Dispatchers Department, Brotherhood of Locomotive Engineers (hereinafter referred to as “the Organization), including but not limited to Article 24(b) in particular when on January 29, 2002, the Carrier arbitrarily dismissed train dispatcher D. E. Greene, without cause and absent any rules violation. The Carrier shall now overturn the previous decision to dismiss the aggrieved and shall clear the record of aggrieved, removing this dismissal from her record and making her whole for any and all lost time, including wages, restoration of seniority rights, and any and all benefits lost as a result of this dismissal (including but not limited to all insurance, vacation, personal leave, and sickness benefits), providing credit to Ms. Greene for the time served as time credited to determine future benefits (including but not limited to future vacation, personal leave, ICP, and sickness benefits), and shall restore the record of the aggrieved to its state prior to the Carrier’s January 29 decision.”**

**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.

After Investigation held on January 10, 2002, the Claimant - a Dispatcher at Forth Worth first employed by the Carrier in November, 1979 - was dismissed by letter dated January 29, 2002 for violation of the Carrier's Rules concerning reporting and complying with instructions regarding documentation of her medical condition.

On August 22, 2001, the Claimant completed an injury/occupational illness report describing her condition as "contact dermatitis hives" resulting from "contact w/rubber or neoprene chair arms." The Claimant did not work after that date.

By certified letter dated September 17, 2001, and in order to determine the Claimant's status concerning returning to work, the Carrier sent the Claimant a medical status form to be completed by her treating physician and returned by October 28, 2001. The U. S. Postal Service returned the letter stamped "Unable to Forward."

On September 26, 2001, the Carrier then e-mailed a copy of the September 17, 2001 letter to the Claimant and further advised her that the letter had been returned and that a September 26, 2001 attempt to call her phone number on file with the Carrier resulted in advice that her phone was no longer in service. The Carrier requested that the Claimant call or reply with a current phone number and mailing address.

By letter dated December 3, the Carrier directed the Claimant to attend an Investigation on December 7, 2001 concerning charges of failure to comply with instructions regarding documentation of her medical condition, being absent from

duty and failing to protect her position. That Investigation was postponed at the request of the General Chairman and rescheduled to December 20, 2001.

The Investigation was postponed again at the request of the General Chairman. It was rescheduled to January 10, 2002.

On January 6, 2002, the General Chairman requested another postponement. By e-mail dated January 7, 2002, the Claimant was asked if she would be available for the January 10, 2002 Investigation and was advised that if she could not appear on that date she should request a postponement and suggest dates within the next month on which she would be available. The Claimant was further advised in that e-mail that if she did not respond by January 10, 2002, the Investigation would be held as scheduled.

By e-mail dated January 8, 2002, the Claimant responded "Please postpone your investigation and address any further inquiries to me through my attorney, Dan Francis."

The Carrier then proceeded with the Investigation on January 10, 2002 without the Claimant's participation.

Substantial evidence shows that the Claimant engaged in misconduct. The Claimant did not report to work after August 22, 2001 and did not provide documentation as directed concerning her condition.

Dismissal was not arbitrary. The Claimant effectively abandoned her job and refused to follow instructions to advise the Carrier of her medical status. Those are serious infractions warranting dismissal. The Claimant's long term status as an employee with the Carrier does not mitigate the seriousness of the demonstrated misconduct.

The Organization's procedural arguments do not change the result. The Carrier postponed the Investigation two times at the General Chairman's request and the Claimant was asked to suggest dates when she would be available. The Claimant's response was not to give available dates, but to tell the Carrier to postpone the Investigation and contact her lawyer. Under the circumstances, we

**find that the Carrier bent over backwards to accommodate the Claimant in an effort to get her to come to the Investigation; the Claimant was evasive with the Carrier; in the end, the Claimant simply refused to attend the Investigation; and it was proper to proceed without her presence.**

**The Organization's other procedural arguments have been considered and also do not change the result.**

**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 23rd day of June 2005.**