

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40578
Docket No. SG-40867
10-3-NRAB-00003-090165**

The Third Division consisted of the regular members and in addition Referee William R. Miller when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(Northeast Illinois Regional Commuter Railroad
(Corporation (Metra)

STATEMENT OF CLAIM:

“Claim on behalf of the General Committee of the Brotherhood of Railroad Signalmen on the Northeast Illinois Regional Commuter Rail Corp.:

Claim on behalf of B. J. Pierre, for payment for all wages lost with any reference to this matter removed from her personal record and to otherwise be made whole, as required by Rule 54 - Exoneration, account Carrier violated the current Signalmen's Agreement, particularly Rule 53, when it issued the harsh and excessive discipline of dismissal against the Claimant without providing a fair and impartial investigation and without meeting its burden of proving the charges in connection with an investigation initially held on December 10, 2007, and concluded on December 12, 2007. Carrier's File No. 11-7-637. General Chairman's File No. 1-D-08. BRS File Case No. 14091-NIRC.”

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.

On October 29, the Carrier notified the Claimant to appear for a formal Investigation on November 2 that was mutually postponed several times and held on December 10, 2007 concerning in pertinent part, the following charge:

“ . . . The purpose of this investigation is to develop the facts and assess responsibility, if any, in connection with you not returning to work immediately after your company doctor's appointment was completed on Friday, October 26, 2007.

In connection with this alleged incident, you are charged with alleged violation of the following rules:

Employee Conduct Rule ‘Q,’ Paragraph 1.

Your personal work record will be reviewed at this investigation (copy attached). . . .”

On December 19, 2007, the Claimant was notified that she had been found guilty as charged and was dismissed.

It is the position of the Organization that the Investigation was procedurally flawed because the Hearing Officer played multiple roles.

On the merits the Organization argued that the record reflects that the Carrier failed to pick the Claimant up from her doctor's appointment. According to it, the fault was with the Carrier and not the Claimant because she did call a co-worker to come and get her who did not come which necessitated her to find a

friend to give her a ride. It closed by asking that the discipline be set aside and the claim sustained as presented.

It is the Carrier's position that no procedural errors occurred that would warrant overturning the discipline imposed. It argued that substantial evidence was adduced to support the Rule violation with which the Claimant was charged. It further argued that the degree of discipline was not excessive considering the severity of the Rule violation and the Claimant's disciplinary record. It concluded by requesting that the discipline not be disturbed.

The Board thoroughly reviewed the transcript and the record of evidence and has determined no procedural error occurred that resulted in the Claimant being denied her Agreement "due process" rights, and because of that, the Board will resolve the case based upon its merits.

The facts indicate that the Claimant was charged with violating Employee Conduct Rule "Q," Paragraph 1 which states the following:

"Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with, or substitute others in their place, without proper authority."

The record verifies that on October 26, 2007, the Claimant was dropped off at the office of the Carrier's physician at 8:00 A.M., one hour after the start of her shift. At 8:45 A.M. the Claimant's appointment was completed. The Claimant never took any immediate action to return to the workplace and never called her Supervisor to request a ride to return to work. More than two hours after the appointment ended, at 10:52 A.M., she called a co-worker, who did not answer his telephone. Subsequently, he called back at 11:15 A.M., wherein she advised him she was going to lunch and would call for a ride when she was done.

At 12:00 P.M. on the date in question, the Claimant's Supervisor called the doctor's office to find out if she had completed her appointment. The doctor's staff advised him she completed her visit at 8:45 A.M. At 2:13 P.M., the Claimant called her Supervisor to inform him she had returned to her headquarters point, having

received a ride back to her workplace from an individual who was not an employee of the Carrier. At 3:00 P.M. the workday ended.

There is no argument between the parties that the Claimant was dropped off by a Carrier employee for an appointment at the office of the Carrier's doctor, Advanced Occupational Medical Specialists, located in downtown Chicago. It was also not refuted that before leaving for that appointment, Foreman Alvarez specifically instructed the Claimant to call for a ride when the doctor's appointment was completed. After the appointment was concluded, the Claimant elected not to call her Supervisor and advise him that it was completed and she needed a ride to return to work. Instead, as the Claimant testified in the Hearing, she sat at the doctor's office, and then called a co-worker and informed him she was going to lunch. The Claimant then chose to sit at a food court reading the paper during which time she arranged to have a friend who was not an employee of the Carrier to come and pick her up and take her back to work. Personal cell phone records were introduced at the Hearing, which showed that approximately two hours after the doctor's appointment, from 11:15 A.M. to 2:13 P.M., the Claimant made and received 13 personal telephone calls. Upon her return to work, she called her Supervisor 47 minutes before the end of the shift to let him know she was back. The record substantiates that the Claimant offered no logical and/or mitigating reasons as to why she failed to follow Foreman Alvarez's specific instructions. It is clear that the Claimant was guilty as charged because she failed to immediately call the Carrier after the completion of her doctor's appointment for a ride back to work, which resulted in her not returning to her assignment in a timely manner.

The only issue remaining is whether the discipline assessed was proper. At the time of the incident the Claimant had approximately 11 years of service with a less than stellar work record, which included eight disciplinary infractions. The record further verifies that she was at the final step in the Carrier's Progressive Discipline Policy. It is clear that the Carrier attempted to use progressive discipline to correct the Claimant's behavior to no avail. Therefore, the Board finds and holds the discipline was appropriate because it was not arbitrary, capricious, or excessive.

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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 27th day of August 2010.