

**Award No. 10920**

**Docket No. CL-13062**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Robert O. Boyd, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**WESTERN WEIGHING AND INSPECTION BUREAU**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5096) that:

(a) The Bureau violated the rules of the schedule agreement when on January 11, 1961, it dismissed Mrs. J. M. Alcock from its service, effective December 5, 1960, without proper investigation on charges which were not proven and which did not warrant discipline.

(b) The Bureau shall restore Mrs. Alcock to service with seniority and all other rights unimpaired.

(c) The Bureau shall compensate Mrs. Alcock for all wage losses sustained on and after the eighth day following the date on which she advises the Bureau of her ability to return to active service.

**OPINION OF BOARD:** Over a considerable period of time there developed a feeling of antipathy between the Claimant and many of her fellow employees. Efforts were made by the Bureau and in certain instances in cooperation with the District Chairman to alleviate the situation; all to no avail. In June 1960, certain employees wrote to the Carrier complaining of the conduct of the Claimant. It will serve no useful purpose here to detail the complaint. The Carrier determined to hold an investigation to ascertain more fully the facts. In the meantime the Claimant asked for and was granted sick leave of 30 days, which was subsequently extended to August 20, 1960. She went on vacation on August 22, 1960 to end September 2, 1960. On August 24, 1960, the investigation, mentioned above, was held. The Claimant was not present. It is not necessary here to recite the many statements of the employees to the effect that the conduct of the Claimant was very upsetting to them and made some even fear for their own safety.

From this investigation the Bureau concluded that before Claimant returned to service she should submit to a medical examination and she was so advised on September 2, 1960. Claimant asked for and obtained a 90 day sick leave terminating on December 5, 1960. She was again advised that she would not be permitted to return to service unless she would submit to a medical examination on or before December 5, 1960. On November 19, 1960,

Claimant wrote the Carrier that she would report for work on December 5, 1960, on Position 20 for which she had earlier placed a bid. She enclosed a statement from her doctor that on December 5, 1960, she could resume her duties. On November 22, 1960, the Bureau advised Claimant that she must report to the District office so that Doctor appointments could be arranged.

It is contended the Bureau had no authority to require Claimant to submit to physical examinations arranged by the Bureau. To this we do not agree. There is an obligation on the Bureau to have in its employ those who are physically and mentally fit for the service to be performed. This is not only for their own protection but also for the protection of fellow employees. The information obtained by the Carrier at the investigation of August 24, 1960, and knowledge of the Claimant's conduct toward her fellow employees already known amply justified the Carrier in requiring the medical examination. The statement from the Claimant's own doctor was not sufficient.

On December 5, 1960, the Claimant reported for work on Position 20 and her husband told the Bureau that she, the Claimant, would not be examined by the Bureau's doctors. When the Chief Clerk called her on the phone she said she had reported for work on Position 20, and that was that. She later refused to talk to the Bureau's officers. Thereupon, she was charged with insubordination and relieved of duty. An investigation under the rules of the Agreement was set for December 12, 1960, but postponed at Claimant's request to January 9, 1961.

At the investigation Claimant did not attend but was represented by the District Chairman. Her husband was also present. Her absence was explained as due to illness, but no statement from any doctor was produced and no request for a continuance was made. Thereafter the Bureau found her guilty of insubordination and dismissed her from the service. An appeal was taken to the highest ranking bureau officer to hear appeals who offered to extend by 30 days the time limit rule and conduct a hearing if Claimant would attend. No timely reply was received and on March 3, 1961, the claim was denied.

It is contended the investigation was unfair because the Claimant was not present. There is nothing in the rule requiring the Claimant to be present. At the hearing no request was made for a continuance and no proof of Claimant's inability to attend was offered. Under all the circumstances here of record we must conclude that the investigation was fairly conducted and that the Carrier had reasonable grounds to find the Claimant guilty of insubordination. Furthermore, in the light of Claimant's record of absenteeism, we cannot find that the penalty of dismissal was harsh or arbitrary.

Therefore, claims (a)(b) and (c) must be denied.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1962.