

Award No. 18360
Docket No. CL-18795

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

PENN CENTRAL TRANSPORTATION COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6783) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal on Mrs. Linda A. Coley, Extra Clerk-Stenographer, Wilmington, Delaware, Eastern Region, Chesapeake Division Seniority District.

(b) Claimant Linda A. Coley's record be cleared of the charges brought against her on January 21, 1969.

(c) Claimant Linda A. Coley be compensated for wage loss sustained by her as a result of the discipline.

OPINION OF BOARD: Claimant was charged as follows: "1. Failed to report for duty on January 16, 1969, after accepting an assignment. 2. Absent from duty without permission and failing to report off on January 16, 1969."

At the hearing held on January 30, 1969, Claimant admitted that on January 15, 1969 she accepted the assignment to report for work on January 16th and she further admitted that she did not report for said assignment on January 16th. Claimant stated that she was sick, but that she did not call or notify her place of business that she would be unable to report for work. Claimant further stated that she was unable to call although she admitted to having a phone in her home.

Claimant's representative, Robert McKinley, Chairman, Protective Committee for the Organization, at the hearing, protested that the hearing was not held in a fair manner because of Carrier's failure to honor an agreement between Carrier and the Organization, dated June 20, 1946, covering extra employees, wherein it was agreed that: "Employees failing to respond for service for which called will be dropped to the bottom of the list. Further, Mr. McKinley contended at the hearing that numerous other employees have

failed to respond, miss time and work without being held on trial or for investigation concerning this matter.

The Organization's position herein is that (1) Carrier failed to prove the charge against Claimant; (2) that Carrier built up the charges against Claimant by making the notice appear as two or three charges; (3) the hearing officer erred when he introduced Claimant's past discipline record into the transcript; (4) the discipline of dismissal was too severe and therefore arbitrary and discriminatory on the part of Carrier.

Carrier alleges that the Organization handled the case on the property as a leniency matter, and inasmuch as the remission of discipline on the basis of leniency is solely a matter of managerial discretion, this Board may not disturb Carrier's discretion in said regard; that Claimant submitted substantial evidence proving Claimant guilty as charged; that Claimant has repeatedly been disciplined in the past for similar offenses, and was warned by Carrier that her attendance record must be improved or subject herself to discipline, and therefore in view of her past record, dismissal was warranted.

In regard to Carrier's defense that the claim was handled on a leniency basis, examination of the record shows that Carrier's Superintendent as well as Director of Labor Relations in successively denying the appeals of Claimant directed letters to Claimant and the Organization's General Chairman, respectively, and referred to having considered the appeal in the light of Claimant's appeal for leniency. The Organization did not at any time on the property or in its ex parte submission to this Board deny that the appeals to the said Superintendent and Director of Labor Relations were not on a basis of leniency.

As was said by this Board in Award No. 11651:

"The record in this case shows that while initially it was handled as a case of not guilty, the Organization shifted its position and in dealing with both the Superintendent, Personnel, and with the Manager, Labor Relations, it was handled as a leniency matter. This being so, this Division has consistently held that while we might not agree with the position of the Carrier on the property, leniency is strictly a matter of management's prerogative. See Awards 9973, 8478, among others. We must, therefore, deny the claim."

See also Award No. 11914. Therefore, we must deny the claim.

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 31st day of December 1970.