

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21225
Docket Number CL-21216

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Detroit Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7918) that:

1. Carrier unjustly dismissed from the service Miss J. Felenski, Key punch Tabulator, Detroit, Michigan, as a result of investigation held on June 19, 1974, in which the transcript failed to support the decision of the Carrier in sustaining the charges made against the Claimant in the caption of the investigation.

2. Carrier shall return Miss Felenski to service with all rights unimpaired, and compensate her for all wages lost account dismissal with 6% interest.

OPINION OF BOARD: Subsequent to investigation, Claimant was dismissed for failure to properly protect her assignment, and furnishing incorrect information regarding her reason for the absence.

The Organization contends that Claimant's due process rights were violated due to certain asserted procedural errors.

Our review of the record does not lead us to the conclusion that the proceedings were procedurally defective. The assertion that the officer who signed the notice of discipline was not present at the investigation does not appear to have been raised while the matter was under consideration on the property and thus, is not properly before us. We do not agree that the fact that the Claimant testified first at the investigation is prejudicial, nor is the receipt of hearsay testimony - under this record.

It is undisputed that Claimant was approximately 45 minutes late and failed to contact the Company until after she was due to work.

The Carrier states that when the Claimant contacted the office and explained her asserted car problem, two Supervisors questioned her story and immediately drove to her residence. Conceding that this was not a normal course of action, a Supervisor testified that he watched Claimant come out of her house, immediately start her car and drive to work. When she was questioned later about the incident, she stated that after she called the office - from a service station - she went back to her car, and when it would not start, she returned to her house. The Supervisor testified further, that having walked from the service station to the Claimant's residence, there was no way the Claimant could have returned to the car before entering the house without being seen.

Certainly, the evidence is in conflict, but the record contains ample evidence to support a conclusion of guilt and this Board finds no basis for disturbing that finding.

Contrary to Claimant's contention, we find that her prior record was considered on the property, as noted in the dismissal notice, and is properly before us. Upon a consideration of the entire record, we find that the termination was justified.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1976.