

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21463  
Docket Number MS-21211

Walter C. Wallace, Referee

PARTIES TO DISPUTE: { Patricia Skinner  
{  
{ Chicago, Milwaukee, St. Paul and Pacific  
{ Railroad Company

STATEMENT OF CLAIM: This is to serve notice as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on March 16, 1975, covering an unjusted dispute between Patricia Skinner and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company involving the question of:

Carrier's termination of seniority and employment of Mrs. Patricia Skinner on or about January 8, 1974. Question involving interpretation of Rule 22 of Clerk's agreement by carrier.

OPINION OF BOARD: The essential facts are not in dispute here. The Petitioner requested permission in writing on January 1, 1974 to be absent on January 3, 1974. Her General Car Supervisor Rebesco declined the request. Again on January 2, 1974 Petitioner made a written request stating it was necessary that she meet with her lawyer in Chicago on a business matter that could not be postponed. This second request was transmitted to the 2nd shift Chief Yard Clerk who advised her she would have to obtain permission from her supervisor. Thereafter, on the same date she had a conversation with Mr. Rebesco wherein she explained her need to be absent to visit her lawyer in Chicago in connection with her divorce. He refused permission explaining that she should handle such personal matters on her off time. Petitioner, in that conversation stated significantly "Well, I still have to be off and I will have to be downtown, and I am not going to tell you to mark me off sick when I am not." That conversation ended with the Petitioner indicating she would call the lawyer to see if she could change the time. Later that evening Petitioner handed the 2nd shift Chief Yard Clerk a letter addressed to Mr. Rebesco reading:

"I will have to be off Thursday 1-3-74 because I have to go downtown to my lawyer's office to take care of some business that cannot be postponed."

The 2nd shift Chief Yard Clerk agreed to give the letter to Mr. Rebesco but he informed her that he would not mark her off because he was not in the position to reverse Mr. Rebesco's decision.

Petitioner was due on shift at 3:00 P.M. on January 3, 1974 and she did not report as scheduled. There is some indication she called in twice that day but nothing was accomplished by such calls. It later developed that the lawyer's office cancelled the appointment at a time subsequent to her reporting time. Further, it is claimed Petitioner became

ill on January 3, 1974 requiring hospitalization on January 4, 1974.

Previously, on November 15, 1972 a notice had been posted for all employes within the Clerks' Agreement to the effect that permission to be absent from service would not be granted without good and sufficient reason. Presumably, Mr. Rebesco was acting within these instructions in denying Petitioner's request.

On January 8, 1974 the Petitioner was informed by mail that she had forfeited all seniority rights in accordance with Rule 23(g) and 3(h) of the Clerks' Rules Agreement "for accepting a leave of absence other than as defined in the Clerks' Rules Agreement on January 3, 1974."

It is Petitioner's claim that Carrier violated the same Clerks' Agreement, particularly Rule 22, when it terminated her seniority and employment. Accordingly, Petitioner seeks reinstatement and back pay.

Certain positions are asserted on each side which should be considered at the outset. For the Carrier's part it is claimed that the Board cannot assume jurisdiction here insofar as the enabling Act only permits consideration of disputes involving employes. It follows, according to this logic, that a resigned employe is not an employe within the definition. The cases cited by the Carrier for this point are not helpful. Award 15565 dealt with the claim of a widow. Award 18107 involved an applicant for employment. Award 9472 involved a former employe who sought rehire based upon a claim relating to an alleged closed shop agreement. Award 18912 involved an applicant who had never been an employe of the carrier. It is sufficient here to point out that the very question to be decided is whether or not Petitioner's actions amounted to voluntary resignation or had resulted in disciplinary dismissal. It begs the question at this stage and serves no useful purpose to view this as a jurisdictional matter.

For the Petitioner's part certain evidentiary matters concerning the medical care, hospitalization and medical condition on or about January 3, 1974 were introduced at the Board level in this proceeding. There is some suggestion that Petitioner asserted a medical basis for her absence and this was promptly challenged by the Carrier as "incorrect and completely misleading." It is clear that neither side offered evidence concerning such matters on the property. As a consequence, we invoke the rule established in numerous cases that such issues and evidence cannot be considered by the Board for the first time because it lacks jurisdiction to do this. See Award 18353 (Referee Dorsey). Accordingly, the matter of Petitioner's medical condition, medical care and hospitalization is not within the ambit of our consideration.

We come now to the substantive issues. First, there is no suggestion that Petitioner voluntarily quit in the conventional way. She did not tender a letter of resignation nor indicate she was quitting by word or deed. In short, there is no evidence that Petitioner had the intention to quit and there is no evidence of an objective manifestation toward that end as contemplated in Rule 3(h) of the agreement. It is Carrier's contention that the severance came about as an automatic result of Rule 23 (g) of the underlying agreement. That rule provides:

"Employees accepting leave of absence other than as defined in these rules shall forfeit all seniority."

It is Petitioner's answer that she never "accepted" leave in the sense suggested. Putting aside her medical excuse, which is not before us, there is no denial that she took unauthorized leave on the day in question. Her position is that this is a disciplinary matter that should be handled under Rule 22. The claimant's brief states:

"Rule 22 specifically requires Carrier to notify the employee in writing of the precise charge against him and the right to a fair and impartial investigation, at which he may be represented by one or more duly accredited representatives before that employee is disciplined or dismissed. Furthermore, any such charge must be filed with the employee within fifteen days from the date the supervising officer has knowledge of any alleged offense."

The Carrier maintains the disciplinary rule has no application here by virtue of Petitioner's automatic severance under Rule 23. A careful review of the awards compels the conclusion that Third Division Award 12993 (Hall) has application here. Similarly, the awards in other Divisions reach the same result: Fourth Division Awards 2832 (Weston) and 3135 (O'Brien); Second Division Award 7017 (Eischen). Award 6801 (O'Brien) of the Second Division, a case distinguishable on its facts, appropriately stated the rule:

"While the conclusion reached herein may appear harsh, it should be noted that Rule 18 is a self-executing rule providing for automatic loss of seniority .... we are left no alternative than to apply the Rule as written and find that Claimant has forfeited his seniority."

On this basis Petitioner forfeited her seniority under Rule 23 (g) and Carrier did not violate the Agreement.

Award Number 21463  
Docket Number MS-21211

Page 4

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 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.

A W A R D

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of March 1977.

