

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22240  
Docket Number CL-22187

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8470) that:

1. Carrier violated the effective Agreement Rules, particularly Rule 21, when under date of November 29, 1976 it dismissed from service Timekeeper Clerk Marianne Tyler, Proviso Yard, account of investigation held on November 23, 1976, and;

2. Carrier shall be required to compensate Marianne Tyler for all time lost commencing November 29, 1976 up until she is reinstated with all rights unimpaired, to include any benefits due her under Travelers Group Policy GA 23000 and Aetna Policy GP-12000.

OPINION OF BOARD: Claimant herein was dismissed from service on November 29, 1976, following an investigation, after having been found guilty of charges that she failed to follow specific instructions to furnish her supervisor with information concerning two early quits for medical purposes together with an unauthorized absence on November 18, 1976.

Petitioner raises first a series of procedural arguments going to the conduct of the investigation. A careful study of the transcript persuades us that they are without merit; Claimant was afforded a fair and impartial hearing.

Two questions must be answered within the confines of this Board's role in disciplinary disputes: Was there substantial evidence adduced in the investigation to support the finding of guilt; and, if so, was the remedy of dismissal appropriate under all the circumstances?

With respect to the first question, from an examination of the record of the investigation, it is evident that Claimant never

furnished the required information to the Carrier officer who had requested it. Instead of the clear and simple data required to substantiate her two early quits, Claimant produced a letter from her doctor indicating that she was ill several days after the dates in question. Concerning her absence without authority on November 18th, there is some conflict in the testimony but there is ample evidence, credited by the hearing officer, to support Carrier's conclusion of Claimant's culpability.

On the surface, the penalty of dismissal for these offenses appears to be somewhat arbitrary and harsh. However, the context in which the penalty was imposed casts a totally different light on the matter. The record indicates that Claimant had been dismissed from service on March 29, 1976 for filing a fraudulent report alleging she was ill and unable to protect her assignment. By an agreement dated August 25, 1976 she was reinstated on a leniency basis with the stipulation that she would be on probation for one year. That agreement is controlling in this case (see First Division Award 23025) since the infraction herein took place less than three months after the signing of the agreement. Claimant's conditional reinstatement in August was abrogated by her actions in this matter.

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.

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 30th day of November 1978.