

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22299  
Docket Number CL-22364

Louis Yagoda, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8510) that:

1. The Carrier violated the effective Clerks' Agreement when following an investigation held on January 28, 1976 it dismissed Ms. Cheryl L. Holley from its service effective February 2, 1977;

2. The Carrier shall now return Ms. Holley to its service with her seniority and all other rights inimpaired; shall compensate her for all time lost as a result of this dismissal from service and shall clear her record of the charges placed against her by the Carrier.

OPINION OF BOARD: We find that on the basis of knowledge available to it and subjected to examination by means of appropriate investigation affording due process, Carrier was justified in concluding that:

1. Claimant's attendance record was seriously deficient.
2. Although these absences were in significant part based on allegations of illness, it was shown that Claimant's physician had released her to return to work effective November 25, 1976 without any restrictions.
3. Claimant remained out of work and unavailable for work during the period November 14, 1976, to and including December 14, 1976 (a total of 17 of the 22 regularly scheduled work days). Reasons given by her were her own illnesses and that of her child.

4. Claimant stated that she did not agree with her personal physician's diagnosis and prognosis of her state of health.
5. Claimant refused the Carrier's Chief Surgeon the opportunity to contact her personal physician to determine her medical status prior to or at the time of the investigation.

However, after Carrier had dismissed Claimant from its service (on February 2, 1977, on the basis of an investigation held on January 28, 1977) a statement was submitted to Carrier under date of March 4, 1977, by a physician specializing in obstetrics and gynecology, in which he stated that his examination of Claimant on February 28, 1977, and examination of Claimant by himself and two colleagues in March, 1977 revealed symptoms attendant on possible pregnancy which "could very well" affect Claimant's physical capability to perform her work competently.

Given this belated revelation of medical possibility of justification for much of the absence involved, we believe it appropriate that, without weakening Carrier's right to continue to give due future weight to Claimant's past failure to protect her work assignments without having furnished contemporaneous and appropriate justification therefor, Claimant be restored to her position, without pay for time lost.

**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 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

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That the Agreement was violated.

A W A R D

Claim sustained to the extent and in the manner set forth in Opinion. Accordingly, Claimant shall be reinstated to her former position within twenty (20) days after receipt by the parties of this Award, without payment for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1979.