

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22651
Docket Number CL-22467

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Atchison, Topeka and Santa Fe
(Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8560, that:

(a) Carrier violated provisions of the current Clerks' Agreement at Chicago, Illinois, on February 16, 1977, when it removed Ms. Sharon Nealis from the service of the Carrier; and

(b) Ms. Sharon Nealis shall now be reinstated into the service of the Carrier with all past rights restored on the basis they were prior to her dismissal from the service of the Carrier on February 16, 1977; and

(c) Ms. Sharon Nealis shall now be compensated eight (8) hours' pay each work day of Bill Clerk Position No. 6244, at the rate of \$51.76⁴⁷ per day since February 16, 1977, and the same for each work day of Position No. 6244 until she is reinstated into the service of the Carrier; and

(d) That all letters pertaining to this investigation be withdrawn by the Carrier and the transcript of the investigation from her personal record.

OPINION OF BOARD: Claimant was dismissed from service on March 4, 1977 following an investigative hearing held on February 16, 1977 in connection with her alleged failure to execute a Form 1516 Standard Leave of Absence application. This disposition was appealed on the property and is presently before this Appellate review.

In considering this case, the pivotal question that we must examine carefully is whether or not claimant was obligated under the specific circumstances of this dispute to complete this form.

Admittedly, it could be argued that her apprehensive perceptions regarding the possible loss of employment benefits justified or at least defensively explained her position but her sum total deportment must be assessed within the interpretative ambit of Rule 13, General Rules for the Guidance of Employees, 1975, which is quoted in pertinent part hereinafter "Employees must not absent from duty without proper authority and when authorized absence is in excess of ten (10) calendar days, entire absence must be authorized by formal leave of absence (Form 1516 Standard) except for scheduled vacation period."

In the instant case, claimant was placed on Medical leave of absence by a carrier official on December 20, 1976, after she disregarded his advice that she seek medical care for her psychological condition. It was not an impermissible decision, since her emotional status potentially affected carrier's ability to provide a safe work environment.

During the month of January, 1977, a professional medical diagnosis of her condition noted that "psychotherapeutic intervention is recommended." It was followed by additional requests to persuade her to execute this form. On February 7, 1977 she was notified by the Superintendent to appear for a formal investigation on February 11, 1977 to determine whether she violated Rules 2 and 13 on account of her absence from duty without authorized leave of absence, beginning February 1, 1977. It was subsequently rescheduled and held on February 16, 1977.

Careful reading of Rule 13 does not reveal any distinctions between an authorized leave of absence initiated by an employee and a leave of absence initiated and authorized by the carrier. The Agent was not barred from placing her on a medical leave of absence, given her mental condition and, as such, was an authorized absence. Claimant was obligated to execute Form 1516 Standard within the ten (10) calendar days following February 1, 1977 and her failure to observe this timetable was at her own peril.

In carrier's letter of September 2, 1977 to the General Chairman, the basic principle governing this dispute was cogently articulated. On page 2 of this communication, carrier stated in part that "It has been the practice on this property from time immemorial that when an employee is being held off his assignment due to substandard medical condition in excess of ten calendar days, that such employee will obtain a formal leave of absence. The carrier tries to remind employees when they are being held off their assignments due to

substandard medical condition that they must obtain a formal leave of absence." There was nothing in the record to refute this construction and it is squarely on point with the specific facts herein.

We can well understand claimant's concern for protecting her employment rights and conditions, but she was required by the clear language of Rule 13 to execute Form 1516. She should have completed the form under protest and filed a formal grievance to contest its application, rather than resort to self-help.

Her continuous refusal to execute this document proved counter productive, thus leaving us with no viable alternative other than to 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 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:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1979.