

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23989  
Docket Number MS-24088

Lamont E. Stallworth, Referee

PARTIES TO DISPUTE: (Donnetta J. Patrick  
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "This is to serve notice as required by the rules of the National Railroad Adjustment Board of my intention to file on behalf of my client, Donnetta J. Patrick, an Ex Parte Submission within thirty days of this Notice concerning an unadjusted dispute between Donnetta J. Patrick and Conrail involving the question and authority of a Superintendent to issue a ruling directed towards one specific employee only prohibiting marking off work for any reason whatsoever, where the rule is ridiculously applied to an employee under medical treatment and orders not to work. The rule as applied contradicts Conrail's own rules relating to the safety, health and welfare of its employees."

OPINION OF BOARD: The Claimant, Donnetta J. Patrick, entered the Carrier's service on June 19, 1979 as a clerk. On November 20, 1979, Claimant was assigned as a crew dispatcher on Job No. 6 at Jackson, Michigan, tour of duty 11:00 P.M. to 7:00 A.M.

Assistant Superintendent R. R. Cierley issued instructions to Chief Crew Dispatcher T. B. McDonald and all other Crew Dispatchers that Claimant would not be permitted to mark off for any reason. Claimant's poor work attendance record was the basis for the instruction. At approximately 7:40 P.M., Claimant Patrick called the Crew Dispatcher's Office and after being informed of the Assistant Superintendent's instructions, marked off duty contrary to such orders.

By letter dated November 23, 1979, Claimant was notified to attend an investigation on November 28, 1979 in connection with the charge of insubordination for failure to comply with the instructions of Assistant Superintendent Cierley.

Following the investigation Claimant was notified by letter dated November 30, 1979 that she was dismissed in all capacities. Claimant's discipline was appealed and handled in the usual manner up to and including the Senior Director-Labor Relations. Subsequent to an appeal hearing on March 12, 1980, the Senior Director reaffirmed denial of the appeal by letter dated March 19, 1980.

Carrier maintains that Claimant deliberately for "no reason" failed to comply with the instructions of Assistant Superintendent Cierley.

Assistant Superintendent Cierley testified that Claimant Patrick's poor attendance record was the basis for his decision that Claimant would not be allowed to be off for any reason and that he issued such instructions to the crew dispatcher's office. Assistant Superintendent Cierley's testimony is corroborated by testimony of Chief Crew Dispatcher T. B. McDonald.

The Carrier asserts that a tape made when Claimant marked off duty on the subject date indicates that Claimant had been advised of Assistant Superintendent Cierley's instructions and that Claimant failed to comply with these instructions for no reason. A transcript of the tape reads as follows:

"J. LaShell: I didn't go. I couldn't be bothered. What's up?  
Are you calling to mark off?

D. Patrick: Yeah.

J. LaShell: Let me read to you my notes then you can  
do whatever you want to. 'Per Assistant  
Division Superintendent, Donny Patrick is  
not to mark off for any reason. There.'

D. Patrick: Oh well, Mark me off until - no reason.  
The hell with them.

J. LaShell: O.K.

D. Patrick: Whose the Assistant Division Superintendent anyway?

J. LaShell: Cooly or whatever. I really have it together don't I?  
Are you sick Donny, or what?

D. Patrick: Yeah - I am - but I have a personal deal. In other  
words I am just flat out fed up with the whole mess  
down there. It makes me sick to walk into that  
office anymore."

Carrier maintains that Claimant produced no evidence that she had been to the dentist, was on medication and was therefore unfit to work as she asserts.

Carrier maintains that Claimant's poor attendance record (off 28 days) and Claimant's short service with the Carrier (5 months), did not warrant extension of any special consideration.

Claimant asserts that on November 20, 1979, following instructions of her gynecologist and dentist, she began to take three prescribed drugs, one of which contains the warning "can cause drowsiness."

Claimant maintains that had she complied with Assistant Superintendent Cierley's instructions and not marked off on subject date, she risked hurting the Carrier by placing co-employees into improper assignments because of her drowsiness and her difficulty in concentration. Further the Claimant contends that her remarks in the tapes must be judged in light of her pain and suffering, her goodwill in calling in early, and the normal effect of such medication.

Upon careful consideration of the record in this matter, the Board concludes that there is substantial evidence on the record to support the charges. The Board denies 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: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of August 1982.