

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24226
Docket Number CL-23797

Robert E. Peterson, Referee

PARTIES TO DISPUTE: { Southern Railway Company
{ Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees

STATEMENT OF CLAIM: Carrier did not violate the agreement with the Brotherhood of Railway, Airline and Steamship Clerks and Steamship Clerks as alleged, when it dismissed Ms. Z. B. Bryce, Executive Clerk, Washington, D.C., from the service of the Carrier for cause on June 4, 1979.

Since the agreement was not violated, Ms. Bryce is not entitled to four hours' vacation pay on June 1, 1979, and eight hours' pay for June 4, 1979, and continuing on a Monday through Friday daily basis until such time she is restored to service, as claimed in her behalf by the Clerks' Organization.

OPINION OF BOARD: This is a dispute whereby the Carrier, as Petitioner, seeks to have the Board affirm its dismissal of Ms. Z. B. Bryce from its service as having been for just and proper cause.

On June 1, 1979, Ms. Bryce failed to report back to work at the end of her assigned lunch period of 12 Noon to 1:00 P.M. During the period between 12:30 P.M. and 1:00 P.M. she reportedly visited an optician's office to have a prescription filled for a duplicate pair of eyeglasses. Notwithstanding this had apparently been accomplished by 1:00 P.M., Ms. Bryce did not return to the Carrier's office building and the floor on which she was working until around 2:00 P.M. She immediately departed the building, without going to her desk, upon being informed by co-workers that Carrier supervisory officers had been inquiring as to her whereabouts. Thereafter, at about 2:20 P.M., Ms. Bryce telephoned a Carrier supervisor who was filling in for her absent supervisor, stating that she was at a doctor's office; he had put drops in her eyes; the eyes were dilating; and, the doctor had advised her to go home. During this conversation, Ms. Bryce also advised the supervisor it was her desire she be shown on attendance records as taking one-half day of vacation. The supervisor submits that his response to Ms. Bryce was merely that he "would tell them"; he did not authorize the granting of any vacation time. Ms. Bryce apparently recognized her request for vacation time was in question or not approved, for about 3:40 P.M. she telephoned Carrier's Manager of Rates and Divisions, stating she was at home and that her eyes were dilating, etc. The record does not show that there had been any discussion during this latter conversation relative to Ms. Bryce's vacation request. However, it does reveal that the Manager did tell Claimant he wanted to see her in his office the following Monday, and that in response to an inquiry from Ms. Bryce that the Manager said he would indeed like for her to bring a copy of the prescription to the office on Monday. It is the Manager's further testimony that following the above conversation he had telephoned Ms. Bryce's home, but was told that she was out at the time.

The record also shows that when Ms. Bryce was in the Manager's office that she again stated she had been to the optician's office, he had put drops in her eyes, etc., and she had only come back to the office to pick up her change purse. In Ms. Bryce's presence, the Manager telephoned the optician, ascertaining that although Claimant did not have a scheduled appointment she had been into his office. Asked by the Manager if he had in fact put drops in her eyes, the optician stated he had not done so; that they do not use eye drops. The optician confirmed his statements in writing the Carrier, including a statement to the effect that after Ms. Bryce had left his office at 1:00 P.M. she telephoned him around 2:50 P.M. and 3:15 P.M. to state she had informed her superiors that she had drops put in her eyes by his office, and that he informed her that was "totally a false statement".

In defense of Claimant, the Brotherhood maintains on the one hand that Ms. Bryce had in fact been granted authority to charge the afternoon off as vacation time and she was free to do as she pleased. On the other hand, it submits Ms. Bryce "panicked" in seeking support for her tardiness in reporting back to work. The Brotherhood also contends that Ms. Bryce was denied the full benefits of her contractual rights to a fair and impartial hearing.

The Board has given careful consideration and study to each of the Brotherhood's arguments. We do not find they have any merit. There is nothing to suggest that Ms. Bryce or her representative were not aware of the precise nature of the charges. Both Ms. Bryce and her representative were provided full opportunity to participate in the formal investigation and to examine the witnesses. There is no showing that they had requested certain witnesses be physically present to substantiate written statements or otherwise be present for cross examination. In this latter connection, we doubt the presence of the authors would have contributed anything differently as Ms. Bryce herself attested to basically those things they had set forth in their letters or memoranda. It is also the Board's judgment that Carrier was not guilty of any reversible error in the manner the hearing was conducted, nor do we believe Carrier was estopped from making reference to Ms. Bryce's personal record in correspondence affirming its dismissal of her from its service.

As to the extent of discipline, the Board is fully aware that dismissal from service is the most drastic punishment which can be imposed upon an employee. However, Ms. Bryce's actions merit imposition of such penalty. There is no doubt that by her actions she knowingly and willfully intended to mislead the Carrier as to her whereabouts on the afternoon in question. It was wrong for her to have overstayed her lunch hour. It was inexcusable folly to be untruthful and injudicious for her to have sought to enlist the services of her optician to give false testimony or compromise the integrity of medical evidence. It was also imprudent for Ms. Bryce to have stated she had returned to the office to pick up her change purse when the record indicates the Manager had in fact been at her desk at the time waiting to talk with her as to her whereabouts. Therefore, on the basis of the record, it cannot be said that Carrier lacked substantial and compelling reason for deciding Ms. Bryce's actions were so serious and unwarranted that she merited the supreme penalty of dismissal from all service.

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 of the Carrier is upheld.

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 14th day of March 1983.