

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25674  
Docket Number MS-25763

Eckehard Muessig, Referee

(Diane Porter

PARTIES TO DISPUTE:

(

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of the intention of Diane Porter to file an ex parte submission covering an unadjusted dispute between her and Conrail, Room 545, Conrail Building, 31 East Georgia Street, Indianapolis, Indiana 46204, involving the question of whether or not the dismissal of Diane Porter by Conrail, dated November 4, 1982 should be reversed."

OPINION OF BOARD: The event leading to this dispute occurred on August 11, 1982. On that date, Carrier wrote the Claimant requesting that by August 27, 1982, she provide information from her Doctor as to when she would return to work. The Claimant last performed service for the Carrier on June 17, 1982. After the Claimant failed to furnish the requested medical information and after she did not respond to telephone inquiries of September 10 and 15, 1982, which were placed on her answering service, Claimant was asked to attend an investigation on a charge chiefly focusing on her obligation to "follow instruction from proper authorities". The Claimant did not attend the hearing held on September 23, 1982, and she was found guilty of the charge and assessed the penalty of a letter of reprimand.

On October 4, 1982, the Carrier duly notified the Claimant that it had scheduled a physical examination for her with a Carrier physician on October 15, 1982. It also provided her with a form to be completed by her physician and advised her that failure to comply with the Carrier's request could lead to disciplinary action.

On October 12, 1982, the Claimant wrote to the Carrier and, in effect, stated that she wanted no interference with her life while she was on disability and recovering. She also stated that on October 8, 1982, she had removed her belongings from the Carrier's office and returned those items that belonged to the Carrier. The letter concluded by stating: "This should conclude our relationship". She did not keep her appointment with the Carrier's physician.

On October 18, 1982, Claimant was notified by certified letter (which she received on October 19, 1982) to attend an investigation concerning her failure to comply with the Carrier's request of October 4, 1982. On October 19, 1982, the Claimant wrote the Carrier and, in essence, stated that she was ill and that her Supervisor's actions were hindering her recovery.

Subsequent to an investigation held on October 29, 1982, the Claimant was dismissed from the Carrier's service. When assessing this discipline, the Carrier gave weight to the Claimant's past discipline record.

There followed a series of letters and appeals, culminating in a denial by the highest Officer of the Carrier designated to handle such disputes. The Claimant's attorney, by letter dated May 17, 1984, then served notice upon the Board of his intent to file an appeal on behalf of the Claimant.

The Board has thoroughly reviewed the evidence properly before it and, on this review, concludes that the claim must be denied.

With respect to the procedural contention advanced by both parties, this Board finds, on the basis of this particular record, that this dispute may best be disposed of on its merits.

Turning to the substantive issues, while the Board is not unmindful of the Claimant's contention of illness, there is nothing in the record to mitigate her refusal to comply with the legitimate requests of the Carrier. As stated many times by this Division, the Carrier has the right to request medical examination in situations such as those raised by this claim. The Claimant's failure to report for the examination and her failure to communicate any reason for refusing to comply with the Carrier's request, were at her peril, since such failures could only lead to serious consequences.

It should be noted that this Board does not lightly sustain dismissal actions coming before it after trials held in absentia. However, the Board notes that while the Claimant was properly notified of the trial, she neither requested a postponement nor notified anyone that she would not attend the hearing.

In view of all the foregoing and the circumstances prevalent therein, the Board has no recourse but 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 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.

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Docket Number MS-25763


Page 3

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Dyer - Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1985.