

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26188
Docket Number CL-26630

Charlotte Gold, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10025) that:

1. Carrier violated the effective Telegraphers' Agreement when, following an investigation held on January 24, 1985, it dismissed Leverman Alan J. Kwiat from service effective February 5, 1985, without just cause;

2. Carrier shall now restore Mr. Kwiat to service with his seniority and all other rights unimpaired; shall compensate him for all time lost as a result of this dismissal from service; and shall clear his record of the charges placed against him."

OPINION OF BOARD: Claimant, a Leverman in Chicago, Illinois, was dismissed from Carrier's service effective February 5, 1985, following an Investigation held on January 24, 1985, into the following charge:

"... for the purpose of ascertaining the facts and determining your responsibility, if any, in connection with your failure to report for the 7:00 a.m. Belt Junction Leverman assignment as required on December 14, 1984."

Carrier argues that sufficient evidence of a probative nature was brought forth at this Investigation to support the finding of guilt and that Carrier's handling of the case on the property was procedurally correct. Claimant was properly notified of the Hearing. The Hearing was postponed at the request of the Organization. Further, the Chief Dispatcher was the proper Officer to render a decision on the case.

Carrier alleges that Claimant offered no convincing evidence of mitigating circumstances to support the contention that his absence from duty and his failure to advise Carrier beforehand were for reasons beyond his control. Given Claimant's past record, the discipline of dismissal is not arbitrary or capricious.

The Organization argues that Claimant was denied a fair and impartial Investigation because the individual who conducts the Investigation must be the one who renders the decision. Claimant was not discharged because of his absence on December 14, 1984, but because he had undergone a drug detoxification program. The reason Claimant did not show up for his 7:00 A.M. assignment was because he overslept, having spent most of the night caring for an ill child. Claimant should be restored to work with full backpay and with his seniority and record intact.

This Board has reviewed the record of this case and concludes that while there was sufficient evidence of a probative nature at the Investigation to sustain Carrier's charge, the discipline imposed was more than what was required in this instance to impress upon Claimant the need to improve his attendance and to notify Carrier in a timely fashion of absences from work. In reaching that conclusion, we agree with the Organization that Claimant's past involvement in a drug detoxification program was not germane to this charge. At the same time, we find that Claimant was afforded all procedural rights guaranteed by Agreement, receiving a full and fair Hearing.

Because of Claimant's proven guilt, we are returning him to work with seniority and all other rights unimpaired, but without backpay. Because Claimant was marked off ill from December 20, 1984, until his dismissal on February 5, 1985, it is appropriate that his reinstatement be contingent upon his passage of a physical.

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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A handwritten signature in dark ink, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of November 1986.