

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 27953
Docket No. CL-28200
89-3-87-3-719

The Third Division consisted of the regular members and in addition Referee Marty E. Zusman when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10209) that:

1. Carrier violated the Agreement between the parties when on August 22, 1986 it dismissed Clerk D. S. Aubrey from service of the Carrier.

2. Carrier shall now be required to compensate Clerk D. S. Aubrey for all time lost, eight (8) hours per day, commencing August 22, 1986 and continuing thereafter until Claimant is restored with full rights and benefits pertaining thereto and her record expunged of any and all references to the disciplinary action taken."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was dismissed from the service of the Carrier effective August 22, 1986, for insubordination when she failed to comply with a May 28, 1986, directive from Carrier's Assistant General Superintendent to attend a June 6, 1986, Hearing in the capacity of a witness.

At the Investigation conducted on August 15, 1986, Claimant acknowledged that she did not attend the June 6, 1986, Hearing and admitted she did not contact anyone regarding her intention not to attend. She testified, however, that Carrier's Assistant Engineer had informed her that she no longer held a position with the Carrier and, such being the case, she felt no obligation to attend and was actively seeking other employment. The Organization also pointed to other undisclosed "personal reasons" for Claimant's failure to report for the June 6, 1986, Hearing.

Since Claimant was employed in 1970, she either knew or should have known the distinction between having her position abolished and having her employment terminated. The Board finds Claimant's excuses less than convincing. She was therefore guilty as charged.

The Organization argues on procedural grounds that Carrier's Senior Director - Labor Relations failed to timely deny the Organization's appeal. Our review of the January 28, 1987, letter of appeal and the rest of the correspondence on the property reveals no violation. Rather, the record convinces this Board that the Claim was held in abeyance with the concurrence of both parties.

The only issue remaining is whether the discipline was reasonable. We find that it was not. A review of the record reveals that the Claimant had nearly sixteen years of service without any prior discipline. In this industry discipline must be progressive, instructive and reasonably related to the offense within the circumstances.

It is noted that the Carrier offered to reinstate the Claimant on a leniency basis in May, 1987, in full and final settlement of the Claim, and the Organization tacitly rejected such offer. It is well settled, however, that offers of compromise made in an effort to settle disputed claims prior to referring them to this Board are not permissible evidence. For this reason, we have not considered Carrier's offer and the Organization's rejection dispositive in reaching our conclusion here.

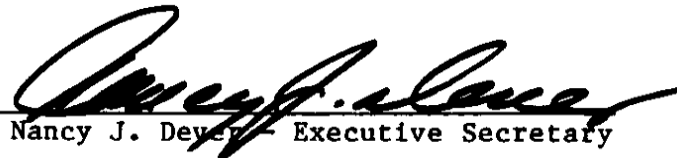
The Board concludes that dismissal is clearly excessive given the peculiar facts and circumstances involved in this case. Therefore, the Claimant is to be reinstated with seniority and all other rights unimpaired and paid for all time lost commencing February 23, 1988, thereby reducing her dismissal to an eighteen month suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1989.