

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10276) that:

1. Carrier, acting arbitrarily, violated Rules 21, 24 and other related rules of the Agreement when, on June 2, 1987, it took the position that Claimant had forfeited her seniority and was considered out of service.

2. Carrier shall now be immediately required to reinstate Claimant, with all rights unimpaired, to the position which she would have been entitled to hold and compensate her an amount equal to what she could have earned including but not limited to daily wages, overtime, and holiday pay had she not been terminated.

3. Carrier shall now also be immediately required to reimburse Claimant for any amounts paid by her for medical, surgical or dental expenses for herself and her dependents, to the extent that such payments would be payable by the current insurance carriers covering similar employees in the Craft. Carrier shall also reimburse Claimant for all premium payments she may have made or may have to make in the purchase of substitute health, dental and life insurance until her regular coverage is restored by Carrier."

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.

On March 25, 1987, Claimant, a Ticket Clerk in Carrier's Martinez, California, ticket office, requested and was granted a leave from March 29 to May 9, 1987, for mental stress. The leave was extended from May 10 until May 30, 1987. Following her failure to return to work on May 31 or to seek an extension, Carrier advised her that she was considered out of service, in accordance with Rule 21(c) of the Agreement. This Rule calls for the automatic forfeiture of seniority rights when an employee fails to report following a leave or provide sufficient proof that circumstances beyond the employee's control prevented his or her return. Carrier considered two doctor's notes submitted by Claimant dated June 14 and June 23, 1987, to be insufficient and affirmed its previous decision. One of the notes indicated that Claimant's mental stress was due to chemical dependency.

The Organization maintains that when Claimant received Carrier's first letter on June 7, 1987, she arranged to see her physician and that she called the District Manager to say that her doctor had previously told her that she would be unable to return until a later date. She alleges that the Crew Base Supervisor asked her to forward medical documentation and that her local representative was advised that an extension would be granted if she applied for it with the appropriate documents. The Organization notes that Claimant was an inpatient in a hospital undergoing care during the latter part of June and contends that Carrier should not have decided that Claimant had forfeited her seniority rights.

While this Board finds that Carrier has a valid point in concluding that Claimant had failed to obtain an additional extension of leave in a timely manner, it also appears from the record that there was considerable confusion on the part of both parties as to Claimant's medical status and the sufficiency of the documentation provided. Under the circumstances, it should now be determined whether Claimant is physically fit to work. If so, she should then be returned to duty with all rights intact, but without back-pay.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1989.