

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29487  
Docket No. CL-30197  
93-3-91-3-700

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

PARTIES TO DISPUTE: (Transportation Communications  
(International Union  
(CSX Transportation, Inc. (former  
(Chesapeake and Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-10639) that:

(1) The Carrier violated the terms of the Clerical Agreement #10, when on April 2, 1990, Ms. B. M. Cutliff was wrongfully suspended from the service of the CSX Transportation Co. as a result of an investigation held on March 23 and 26, 1990 in the Conference Room at Levan Road, Livonia, Michigan.

(2) That Clerk Cutliff's record be cleared and she be compensated for all lost wages due to this investigation and discipline."

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 directed to attend two formal Investigations on March 23, 1990, each of which concerned charges she failed to protect her assignment. On April 2, 1990, Claimant was informed she was assessed a thirty day suspension in connection with the first Investigation for missing a call on February 28, 1990, to train on a position from midnight to 8:00 A.M. on March 1, 1990.

The same day, Carrier notified her she was dismissed, as a result of the second Investigation, for failing to protect her assignment on March 10 and 11, 1990.

Our review of the transcript of the first Investigation shows attempts were made to call Claimant at both of the phone numbers she had on file. Although her position as an Extra Board Clerk required her to be available for call, she could not be reached.

At the second Investigation, the record shows Claimant was assigned to the Relief Operator position at Plymouth, Michigan, with a starting time of 8:00 A.M. With regard to March 10, 1990, Claimant testified she failed to set her alarm clock, and did not report to work until 10:40 A.M. On March 11, 1990, Claimant did not report to work at all. Instead, she called to mark off duty at 10:00 A.M. According to Claimant, she had car problems on the way to work. Although Claimant had additional charges against her at this Investigation, they were not included in the discipline notice, and it is, therefore, unnecessary to discuss them.

Based upon our review of the records of the two Investigations, we conclude there is substantial evidence to support Carrier's charges against Claimant. We do not agree with the Organization's assertion that Claimant's absence on March 11, 1990, should be excused because it was due to car problems. Claimant has a responsibility to ensure that she has reliable transportation to work. Her failure to maintain her car, which we note was thirteen years old, in working order cannot be said to be beyond her control.

Claimant was first employed by Carrier in 1979. Other than two letters of admonishment, there is no indication she had been assessed any discipline by Carrier until September 1988. Since then, she was disciplined on six occasions leading to the incidents covered by this claim. All of these discipline entries were attendance related. Although Carrier has applied the principles of progressive discipline, including the issuance of the thirty day suspension in the first case, it is our conclusion that permanent discharge in the second case is excessive.

We are prone to grant Claimant the benefit of the doubt that her attendance problems were of such a nature that they could be resolved. Accordingly, we will direct that she be reinstated with seniority and all other rights unimpaired, but without pay for time lost. Claimant, however, should understand that the purpose of this reinstatement is to afford her one last chance to demonstrate to the Carrier that she is a responsible employee. Should her attendance problems recur, Carrier would be justified in dismissing her permanently.

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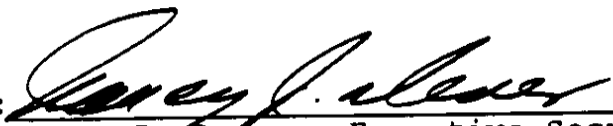
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A W A R D

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 21st day of January 1993.