

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29683  
Docket No. CL-30457  
93-3-92-3-334

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. (Formerly Chesapeake  
(and Ohio Railway Company)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization  
(GL-10798) that:

- (1) The Carrier violated the Clerical Agreement at Russell, Kentucky on August 30, 1990, when Claimant Ms. C. G. Withrow, was unjustly assessed the discipline of dismissal on the Board of Inquiry held August 23, 1990, at the Ramada Inn, Delta Lane, South Point, Ohio.
- (2) The Carrier shall now restore Ms. Withrow with full seniority rights, clear Claimant's record of this Board of Inquiry and compensate Claimant for each and every day Claimant has lost in wages from August 23, 1990, until date Claimant is reinstated."

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 and employes involved in this dispute are respectively carrier and employe 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.

Following an Investigation, Claimant was dismissed from service for excessive absenteeism, effective August 23, 1990. The record establishes Claimant was absent a total of 102 days between September 16, 1989, and May 21, 1990. These absences were divided among 16 occurrences.

Before considering the merits of Claimant's dismissal, however, the Organization has asked the Board to consider various procedural objections. First, the Organization asserts the Carrier failed to provide a complete and accurate transcript of the Investigation. Carrier acknowledges that one or two questions asked by Claimant's representative were deleted, however it is evident the Carrier offered to correct the transcript using either the tape recording made by Claimant's representative, or the shorthand notes of an employee who had been in attendance as a witness, but did not testify. Both of these offers were declined. While a complete and accurate transcript is vital to Claimant's right of appeal, two factors in this case cause us to dismiss the Organization's objection. Carrier offered to rectify the situation, but was not permitted to do so. Furthermore, although Claimant's representative apparently had a tape recording with the missing questions, there has been no suggestion that their omission was prejudicial.

Secondly, the Organization objects to the fact that the Carrier conducted the Investigation in the absence of the Carrier official who had directed Claimant to document all of her absences with statements from her physician. The official was not present because he had died prior to the Investigation. His absence from the Investigation, however, does not automatically render the discipline invalid. As will be shown below, his testimony would not likely affect the outcome, even if it were most favorable to Claimant.

Finally, the Organization has asserted Claimant was denied contractual due process because the hearing officer at the Investigation was the officer to whom the Organization was required to file its first appeal. This Board has sanctioned a multiplicity of roles in some cases while it has held in others that due process rights were violated. We must examine the circumstances in each case that comes before us. See Third Division Award 28567. An employee who has been disciplined is entitled to an independent review of the Carrier's actions prior to submission of the dispute to arbitration. This Board is satisfied that such independent review was afforded when the claim was handled at subsequent stages of the grievance process.

With regard to the merits, it is undisputed that Claimant's attendance record indicates a severe absenteeism problem. While the Board is cognizant that Claimant has had serious problems with her health and that of her family, her absenteeism far exceeded even the time allowed by the Family Leave Act, enacted subsequent to Claimant's dismissal. This Board has, in many previous cases, supported disciplinary action for chronic absenteeism, notwithstanding the reasons for the absences, or the fact that such absences might have been authorized. For this reason the testimony of the deceased official would add nothing to the Investigation. Claimant's attendance record spoke for itself. An employer has a right to expect regular attendance by its employees. According to Carrier, it got to the point where employees were scheduled to relieve Claimant with such regularity that it was actually disruptive when she came to work. Certainly, Carrier was warranted in taking disciplinary action.

We do not agree that the quantum of discipline imposed by Carrier was appropriate, however. Claimant was first hired by Carrier in June 1969, thereby having more than twenty years of service. There is no indication in the record before this Board that she had received any discipline prior to this offense. Even though Carrier documents attendance problems as early as 1980, it is apparent Carrier chose not to discipline her at that time. Carrier, in 1985, had ruled that Claimant had forfeited her seniority by engaging in outside employment while on a leave of absence. This action was reversed by Public Law Board No. 3540, in Case No. 61, finding there was a lack of sufficient evidence of probative value to substantiate the Carrier's charge. Claimant's reinstatement was not on a leniency basis, as characterized in Carrier's submission.

We realize Claimant had been counseled about her absenteeism problem and warned that her continued absence would jeopardize her employment relationship. Nevertheless, Carrier has an obligation to recognize Claimant's long service in its assessment of discipline. Furthermore, it is evident that some of Claimant's attendance problems were related to situations which might have now been resolved. Accordingly, we conclude the discipline imposed was excessive, and direct that Claimant be reinstated to service with seniority and all other rights unimpaired, but without compensation for time lost. Carrier may, at its discretion, require Claimant to submit to any appropriate medical examinations to determine her fitness for service. Claimant should be aware that her reinstatement does not constitute an exoneration. Upon return to service, Claimant should expect to be required to maintain attendance comparable to other employees. Claimant's failure to do so could result in permanent dismissal.

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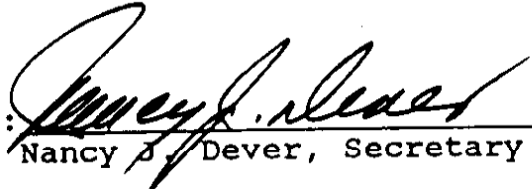
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A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 29th day of June 1993