

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29806
Docket No. CL-30609
93-3-92-3-382

The Third Division consisted of the regular members and in addition Referee Robert G. Richter 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-10800) that:

1. The Carrier violated the provisions of Rule G on February 27, 1989, when M. L. Floyd's name was removed from the Seniority Roster District No. 3, General Office, Baltimore, Maryland. Letters dated August 24, 1988 and January 18, 1989 state Mr. M. P. Leahy, Director Car Accounting position for taking such drastic action against M. L. Floyd, however, she is still in the Rule G program and he doesn't have the power or ability to determine when M. L. Floyd is rehabilitated and what time frame this will take. She is at the mercy of the counselors who are the only representatives of the Carrier who can make such a determination.
2. M. L. Floyd should be made whole for any losses sustained after she is recommended to return to service by Rule G Program and passes the physical. Please place her name back on the Roster and comply with the agreed to provisions of Rule G."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 employed by the Carrier in its office of Director Car Accounting, Equipment Group, Baltimore, Maryland. On July 29, 1988, she was requested to attend a formal Investigation on August 2, 1988, in connection with the following:

"You are hereby charged with excessive absenteeism and/or tardiness in that you were absent on January 12, February 3, 4, 5, 10, 11, 12, 16, 17, 18, 19, March 22, 23, May 19, June 16, 17 and July 11, 12, 13, 14 and 15, 1988. You reported for work late on May 5 and June 1, and you failed to report for work on July 25, 1988."

However, an Investigation was never held. On August 24, 1988, Claimant admitted the charges and was dismissed from service. Although the Carrier had been extremely lenient about this employee's absenteeism, it once more granted leniency by suspending the dismissal pending the Claimant's immediate entrance into an appropriate drug/alcohol treatment program, successful completion of the program, and complete rehabilitation. This understanding was signed by Claimant and the Local Chairman. In November 1988 Claimant attempted to return to work, but failed a toxicological examination due to presence of cocaine. However, again the Carrier agreed to extend the suspended dismissal. All this time the Claimant was out of service allegedly receiving treatment for substance abuse.

On January 18, 1989, Carrier wrote the Claimant and ordered her to return to active service on February 27, 1989, in a drug free status. Claimant failed to return to service and the dismissal was effectuated and Claimant was removed from the Seniority Roster.

The Organization has argued the Carrier had improperly dismissed the Claimant without a hearing and that they had failed to comply with the Rule G Bypass Conditions.

This is not a Rule G case. Claimant was charged with excessive absenteeism. A charge neither the Claimant nor the Organization has denied. In an effort to be lenient in this employee's case the Carrier extended her the opportunity to get her life in order by entering a drug rehabilitation program.

The most perplexing issue before this Board is that there are no time limits stated in the August 24, 1988 agreement in which the Claimant had to complete her rehabilitation program. However, in this case one must be reasonable. The agreement stated she would enter a program immediately, August 1988. Yet when trying to return to work in November 1988, and in February 1989 she was still using drugs. Since a full six months had elapsed, it was reasonable to assume Claimant was not going to comply with the terms of the agreement and the Carrier properly effectuated the dismissal. We must deny the claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 29th day of September 1993.