

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32451
Docket No. MS-32854
98-3-96-3-195**

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

**(Pasquale Croce
PARTIES TO DISPUTE: (
(New Jersey Transit Rail Operations**

STATEMENT OF CLAIM:

"My termination from the NJ Transit. Due to personal problems in my life at the time of termination. I was unable to properly defend myself during my hearing. I am requesting an opportunity to defend myself again and to be reinstated in my job."

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 were given due notice of hearing thereon.

Claimant was employed at all relevant times as a Lead Clerk who was responsible for inputting data on timecards, producing weekly overtime reports, and submitting completed employee timecards to the Payroll Department. His duties and responsibilities did not include however, authorizing overtime for any employee.

Despite that fact, the Claimant submitted his own timecards for the period January 3 through January 17 showing eleven overtime hours although he did not in fact work overtime during that period and did not obtain authorization for any such overtime. In all, the Claimant was paid \$268.73 for overtime to which he was not entitled.

Ultimately the Carrier discovered the discrepancy and confronted the Claimant. When confronted the Claimant did not deny his actions, but rather asked whether he would be discharged. When the Claimant was informed that he would indeed be removed from service he asked for leniency, citing family problems. Despite his request, the Claimant was removed from service.

The Claimant represented himself at the Hearing on the property. In doing so he failed to fully explain his actions, saying only that he was having a problem at home and that he could not explain the nature of his problems in any detail.

Before this Board the Claimant now explains that during the time that he submitted the false timecards and while he was representing himself at the Hearing on the property he was facing serious personal problems which led him to abuse alcohol. Ultimately, the Claimant became a victim of alcoholism which in turn led him to deny his condition as well as his misconduct and prevented him from fully representing himself when his removal was originally contested. Since then however, he has enrolled in Alcoholics Anonymous, successfully treating his condition, and his family has supported him in his efforts. In short, the Claimant asserts that his family and his job are his priorities in life and that, "(m)ore than anything, I would like a chance to prove myself to the company again."

We are faced in this case with a situation where an employee has admitted his guilt of the charges against him, but who has asserted mitigating circumstances that caused him to engage in that misconduct which are now no longer extant. However, the instant matter also presents this Board with serious charges of misconduct against an employee with a prior disciplinary record. Moreover, it is well settled that leniency is not for this Board to provide, but rather lies in the informed discretion of the Carrier.

In such a situation we see no choice but to uphold the removal from service and deny the claim. We do not do so lightly for the Claimant has appeared to us to be sincere in his assertions, particularly in light of the fact that he appeared in person

before this tribunal, and there is no evidence to contradict his assertion that he is, in his own words, back on his own feet and believing in himself once again. Thus, we take him at his word. Moreover, we praise him for his candor and his commitment to his continuing rehabilitation. Sadly however, his word is not enough to compel us to any conclusion other than a denial of his claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of January 1998.