

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 37284  
Docket No. CL-37435  
04-3-02-3-429

The Third Division consisted of the regular members and in addition Referee Joshua M. Javits when award was rendered.

**PARTIES TO DISPUTE:** (Transportation Communications International Union  
(Springfield Terminal Railway Company

**STATEMENT OF CLAIM:**

“Claim of the System Committee of the Organization (GL-12907)  
that:

1. The Carrier violated the Rules of the parties' Agreement made effective August 20, 1973 and revisions thereto, particularly Rules 30 and 39, among other applicable rules, when on September 25, 2001, it held an unfair and partial investigation on charges preferred against employee Veronica Predmore, alleging that she was excessively absent during the period of April 1, 2001 through June 30, 2001.
2. The Carrier further violated the Agreement when without negotiations with the General Chairman it arbitrarily amended Rule 30 – Sick Leave, with a Company created policy that included paid sick days in computation of days absent in its quarterly configuration to determine a standard for accepted absences, or excessive absences, which standard differs each quarter.
3. The Carrier issued an unfair decision of reprimand against employee Predmore's employment record, resulting from the faulty investigation and unethical absenteeism policy which runs counter to the parties' Sick Leave Rule, as well as the provisions of the Family Medical Leave Act (FMLA).

4. The Carrier shall be required to expunge from employee Predmore's employment record the decision of reprimand resulting from the investigation held September 25, 2001, and all notations placed thereon resulting from the faulty investigation.
5. This claim has been presented and properly progressed in accordance with the applicable provisions the parties' Agreement."

**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.

On July 18, 2001, the Claimant was directed to attend a Hearing on August 10, 2001 to investigate a charge of alleged excessive absenteeism during the period of April 1 through June 30, 2001. The Carrier concluded that because she had been absent for 55.25 hours during this period, while the shop average was 16.93 hours, the Claimant had been excessively absent.

The Investigation was subsequently postponed until September 25, 2001.

Following the Investigation, the Claimant was issued a formal reprimand for excessive absenteeism. The Organization contends that the disciplinary action taken was flawed because the Carrier improperly included paid sick leave days in its

determination of when the Claimant was absent from employment. Because the Organization maintains that those absences were due to specific medical problems and were supported by medical evidence from her physician, the Carrier was not justified in considering them as absences and its discipline should be set aside.

Precedent is clear that the Carrier may maintain an absenteeism policy that imposes discipline for excessive absences even when those absences are for legitimate reasons, as is the case in the present dispute. Therefore, although the Claimant's absences were considered to be legitimate sick leave days, and were supported by medical evidence, they may still be considered excessive. On this basis, the finding of excessive absenteeism by the Carrier was proper.

In order to avoid such a finding, the Claimant should have completed the requisite FMLA application forms with respect to those dates that she was absent due to a medical problem. The Claimant failed to do so.

Moreover, the Claimant was aware that she was required to complete the necessary FMLA documentation in order for the absences to be authorized. This is evidenced by the fact that she had previously completed the requisite FMLA forms before taking medical leave. Consequently, the Claimant's absences were properly subject to discipline.

Furthermore, the record shows that the Claimant was informed by the Carrier on October 31, 2000 that she had an excessive amount of absences in comparison to her fellow employees and based upon that record the paid sick days were not authorized absences. They were simply compensated absences. On this basis, the Board concludes that the formal reprimand issued by the Carrier for excessive absenteeism was appropriate.

**AWARD**

**Claim denied.**

**Form 1**  
**Page 4**

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**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 17th day of November 2004.**