

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42455
Docket No. MS-42546
16-3-NRAB-00003-140197**

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

PARTIES TO DISPUTE: (Jenny Flores
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

“I was wrongfully terminated under:

1. **Failure to protect my shift** (I protected my shift on 01/25/2013 I called the automated call of system followed procedures and the call was registered.)
2. The employee handbook what is “Failure to Protect a Shift” states: A Failure to protect a shift? When a mark-off is made after the start the shift, NOT INCLUDING A LATE FLEX and the employee does not work any of his/her assignment.

* * *

My initial intent is simply to be reinstated with same seniority, full time Spanish, current pay rate of seniority, and if possible but not my intent retro pay.”

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.

By notice dated February 12, 2013, the Petitioner was directed to attend a formal hearing on charges that the Petitioner allegedly had violated Carrier Rules by failing to make contact with the Carrier through the automated Call-Off Line before the start of her shift on January 25, 2013, not including the late flex and then reported for work after the late flex. The investigation was conducted, as scheduled, on February 25, 2013. By letter dated March 6, 2013, the Petitioner was notified that as a result of the hearing, she had been found guilty as charged and was being dismissed from the Carrier's service. The Transportation Communications Union/IAM thereafter filed a claim on the Petitioner's behalf, challenging the Carrier's decision to discipline her. The Carrier denied the claim. The Petitioner subsequently pursued this claim before this Third Division.

The Carrier contends that the instant claim should be denied in its entirety because substantial evidence conclusively establishes that the Petitioner is guilty as charged, because the arguments raised by the Petitioner and by the Organization are unpersuasive, and because the discipline assessed was appropriate under all of the relevant circumstances. The Petitioner contends that the instant claim should be sustained in its entirety because of the lack of representation from the Organization, because the evidence supports the Petitioner's position that she complied with the Carrier's rules, and because of discrimination, favoritism, and a lack of honesty and integrity by the Organization leaders.

The parties being unable to resolve their dispute, this matter came before this Board.

This Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record to support the finding that the Petitioner was guilty of failing to protect her shift and failing to follow instructions when on January 25, 2013, she did not make contact with the Carrier through the automatic Call-Off Line before the start of her shift and then reported late for work. She did not notify the Carrier of her late arrival before the start of that shift. This relatively minor infraction was, as the Carrier calls it, "the straw that broke the camel's back" because of her previous poor attendance record. The Petitioner placed herself in a position of discipline because of this latest infraction.

Once this Board has determined that there is sufficient evidence in the record to support the guilty finding, we next turn our attention to the type of discipline imposed. This Board will not set aside a Carrier's imposition of discipline unless we find its actions to have been unreasonable, arbitrary, or capricious.

The Petitioner's disciplinary record, which dates back to her early days with the Carrier in 2010, shows numerous instances of attendance violations and failure to perform one's duties. The Petitioner had previously received a five-day suspension, a ten-day suspension, a twenty-day suspension, and a thirty-day suspension. Given that previous disciplinary background, coupled with this latest infraction, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the employment of this relatively short-term employee.

For all the above reasons, this claim must be denied.

AWARD

Claim denied.

ORDER

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 31st day of October 2016.