

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 42891
Docket No. MS-43473
18-3-NRAB-00003-150379**

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

PARTIES TO DISPUTE: (Kathy Vance
(National Railroad Passenger Corporation

STATEMENT OF CLAIM:

“In my 20 plus years of serv[ic]e I should have been charged 30 [] days of suspension not fired. I know of no other employees that had two thirty day charges and even 45 days. Why not me why was I treated so harshly. You can check other employee discipline records and see that this is true.

At the Hearing [I] explained: I did call in but with no confirmation number given (like most other companies) had no way to know the call was not recorded. Since I live close to the office I could not get a long distance bill.

...

What I would like to see happen is to right the wrong.

If some of my charges are to be corrected then [I] would be able to come back to work and continue my 20 plus years of service. With Amtrak.”

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 6, 2014, the Petitioner was directed to attend a formal Hearing on charges that she had failed to report for duty on a trade-on assignment on January 18, 2014, and had failed to notify her supervisor about this absence. The Investigation was conducted, after a postponement, on February 26, 2014. By letter dated March 5, 2014, the Petitioner was notified that she had been found guilty as charged and that she was being discharged from the Carrier's service. The Transportation Communications Union/IAM filed a claim on the Petitioner's behalf, challenging the Carrier's decision to discipline her. The Carrier denied the claim. The Petitioner then pursued an appeal of this matter to the Third Division of the National Railroad Adjustment Board.

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 discipline imposed was appropriate in light of the Petitioner's discipline record, and because the discipline imposed was not arbitrary, capricious, or excessive. The Petitioner contends that the instant claim should be sustained in its entirety because the Petitioner was subjected to disparately harsh treatment, because the Carrier failed to consider her long years of service and good work record, and because the discipline imposed was harsh and excessive.

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

The Board has reviewed the evidence and testimony in this case, and we find that there is sufficient evidence in the record that supports the finding that the Petitioner was guilty of failing to call off work as required on January 18, 2014. The record reveals that the Petitioner normally did not work on Saturdays but

committed to work in place of a co-worker through the trade-day process and did not call in to work to inform the Carrier that she would not be coming in that day. Although the Petitioner states that she did call in, the Carrier's automated system does not show any call from the Petitioner. Consequently, the Petitioner subjected herself to disciplinary action by making the trade with a fellow employee and then failing to call in for work or to show up to perform service for the Carrier.

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 in this case, despite her lengthy seniority, has accumulated an appallingly bad attendance record. Her record reveals a number of reprimands, deferred suspensions, and actual suspensions for the period 1998 through 2014. All eighteen of those disciplinary actions were taken in conjunction with the Carrier's Attendance Policy.

Given the Petitioner's terrible absenteeism record and previous discipline for that absenteeism, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated the Petitioner's employment in this case. Therefore, 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 10th day of January 2018.