

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 44458
Docket No. 45526
21-3-NRAB-00003-190439

The Third Division consisted of the regular members and in addition Referee Jacalyn J. Zimmerman when award was rendered.

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.

STATEMENT OF CLAIM:

“The burden of proof has not been met by the Carrier. Without proving that the Claimant was not on her approved and scheduled vacation, the Carrier cannot prove that she violated the CSXT Crew Attendance Policy System (CAPS) as stated on the discipline letter, which she hasn't.

For the reasons contained herein, the Organization requests that the Claimant's record be expunged of this incident, and that she be paid for all time lost, including investigation.”

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.

The Claimant, L.D. Riley, has been employed by the Carrier since 2007. At the relevant time, she was employed as a Train Dispatcher at the Carrier's Jacksonville, Florida Network Operations Center. On May 20, 2018, following an investigation, the

Carrier assessed the Claimant a 15-day actual suspension for reaching and/or exceeding the point threshold under the Carrier's Attendance Policy System (APS) after she failed to report to work on September 16, 2018 and marked off sick on October 31, 2018.

Effective April 1, 2017, the Carrier maintains the attendance policy known as APS, a no-fault attendance system which operates on a points basis. When an employee marks off or has a triggering event under the policy, she accumulates points according to the schedule. Different types of absences are assigned different point values depending upon the type of absence and/or day of the week the event occurs. APS provides a Medical Review process by which employees can submit medical documentation and request that absences be excused for qualifying medical reasons. APS also provides employees attendance credits.

When an employee reaches 20 points or more, she reaches a handling "step." At Step 1 and Step 2, the employee is issued a counseling letter, at Step 3, a formal reprimand. When an employee reaches 20 points for the fourth time, she becomes subject to Step 4 handling and potential dismissal.

When the step is assessed, ten points are deducted from the employee's record. If a full month passes without an attendance issue, three points are deducted from the employee's accumulated point total.

For purposes of dismissal only, the 20 point total is increased two points for each five years of service. The Claimant has 2007 seniority, which put her threshold for Step 4 at 24 points.

In NRAB Award No. XX (03-190443), we found that the Claimant had violated the APS by failing to appear for work the week of September 8, 2018, which was to be observed from September 12 to September 16, 2018. We rejected the Claimant's contention that she had approved vacation for that week.

In that case, by September 15, 2018, her fourth day of unapproved time off, the Claimant was subject to APS Step 3 handling and assessed a written reprimand, which was the subject of the claim. It was denied by this Board.

When the formal reprimand was applied, after the 23 point threshold, 10 points were subtracted, as provided in APS, and the Claimant's point total was reduced to 13. The Claimant remained off work September 16, 2018. That put her point total at 23.

Because of her seniority, the Claimant's points were not over the threshold for additional handling at that time.

When she marked off sick on October 31, 2018, the Claimant was assessed three points, which, based upon the documentation the Claimant provided to Carrier Medical, was classified as non-emergency. That put the Claimant at 26 points, which subjected her to Step 4 handling, up to and including dismissal.

The outcome in this matter is controlled by our determination, in NRAB Award No. XX (03-190443), that the Claimant did not have approved vacation the week of September 8, 2018, and that she violated the APS each day she remained off work, especially as her supervisor had contacted her and instructed her that she needed to return. Therefore, by remaining off work on September 16, 2018, her 23 points were just one point shy of the total, 24, to trigger Step 4 handling. When the October 31, 2018 sick event caused her to accrue three additional points, she reached Step 4. While the APS provided for possible dismissal, the Carrier chose to assess her a 15-day suspension.

The record contains nothing to indicate that the Claimant's sick event was handled other than in compliance with the APS. There is no dispute that the Claimant did not have attendance issues prior to the events at issue here, and the 15-day suspension may seem a harsh result. But once the Claimant chose to remain off work for an entire week without authorization, she put herself in a position where any absence could trigger substantial discipline, including dismissal. We cannot say, under the circumstances, that the Carrier's decision to assess a 15-day suspension was an unreasonable or arbitrary exercise of its discretion to determine the appropriate penalty.

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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 10th day of June 2021.