

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 44462
Docket No. 45530
21-3-NRAB-00003-190443

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:

“Although Ms. Riley was on a scheduled vacation, it appears that she is being disciplined due to the Carrier's faulty record keeping.

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 the aforementioned 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. On December 13, 2018, following an investigation, the Carrier assessed the Claimant a formal reprimand 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 15, 2018.

The underlying facts of this case are not in dispute. 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.

At the relevant time, the Claimant was employed as a Train Dispatcher at the Carrier’s Jacksonville, Florida Network Operations Center. She was at APS Step 2, with a balance of 13 points. She had been scheduled for vacation the week of September 8, 2018, 2018, which was to be observed from September 12 to September 16, 2018.

The parties agree that the Claimant then requested vacation for the previous week, of September 1, 2018, observed September 5 through September 9, 2018. The Carrier contends that the Claimant deferred her originally-scheduled vacation week, choosing instead to take it the week of September 1, 2018 and that she was therefore due at work the second week of September, including September 15. The Organization contends that the Claimant had instead intended to take both weeks off, and requested the week of September 1, 2018, so that she could have two consecutive weeks of vacation.

Carrier witness Scott McGowan, Network Operations Manager, was the Chief Dispatcher prior to and at the time of the incident. He explained that the process to schedule vacation weeks must go through the Chief (himself) and the Organization Local Chairman. Both confirmed that the Claimant opted to defer the week of September 8 in order to take vacation the week of September 1 instead. They therefore

expected that the Claimant would appear for work the week of September 8, 2018, but she did not do so.

Mr. McGowan testified at the hearing that when the Claimant did not report he called her, but she did not answer; he did so again the following day, again with no answer and no return call. He stated that she returned his call three days later, and he asked if she could report for work. She asked why and he told her she did not have the week as vacation. He stated that she disagreed and told him she would return after her rest days.

The Claimant maintained that she called Mr. McGowan while she was off to find out what was going on, as she understood there was an issue with her vacation. He told her the problem was that she had swapped out vacation weeks, the week of September 1, 2018 for the week of September 8, 2018, and she said that was incorrect, as they had discussed several times that she wanted two consecutive weeks of vacation. She finally asked that he just let her finish her vacation, and, she testified, he said okay.

The Claimant was assessed points pursuant to APS for each day that she failed to report. By September 15, she had reached Step 3. In accordance with the policy, the Carrier issued her the instant formal reprimand.

The Organization first alleged that the Carrier violated Article 12 of the Agreement by lodging charges against the Claimant outside the 15-day time limit proscribed therein. However, we agree with the Carrier that the record shows although Mr. McGowan was aware of the Claimant's failure to report and that she would accumulate points pursuant to the APS, he was not aware of her exact point totals or the extent to which she might be subject to discipline until October 8, 2018. That was his first knowledge that the Claimant's total attendance events subjected her to disciplinary review. We also agree with the Carrier that the recent on-property award in PLB 7650, Case No. 39, supports this conclusion.

On the merits, the record supports the Carrier's charge was the Claimant had not received authorization to be on vacation the week of September 8, 2018, and that she did not appear for work. We do not agree with the Organization that there was confusion around this point, and the record shows that Mr. McGowan attempted to contact the Claimant when she first failed to appear, that she did not return his calls until some days later, and that when he informed her that she did not have

authorization to be off work she told him she disagreed and would return after her rest days.

It is true that the Claimant has virtually no attendance history, and it might seem harsh that she was subjected to increased handling for each consecutive day of absence within one week, rather than for repeated instances over some period of time. However, the record indicates that the Claimant knew she could not get the time off, took it anyway, and evaded Mr. McGowan's efforts to get her back to work, which would have stemmed the accumulation of points. Under these circumstances, the Board cannot conclude that the Carrier's actions were unreasonable. We therefore deny the 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 10th day of June 2021.