BEFORE PUBLIC LAW BOARD NO. 7007

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
and
MASSACHUSETTS BAY COMMUTER RAILROAD

Case No. 20

STATEMENT OF CLAIM:

Carrier's dismissal of Claimant D. Holloway was arbitrary, extremely harsh, and not based on the facts developed at the hearing. The Claimant should be immediately returned to work and compensated for all lost wages and benefits.

FINDINGS:

By letter dated March 4, 2008, the Claimant was directed to appear at a formal investigation on charges that the Claimant allegedly had violated the AWOL, Excessive Absenteeism, and Pattern Absenteeism sections of the Carrier's Attendance Policy, as well as Rules 4(a), 4(c), and 17(b) of the Carrier's Code of Conduct when she was absent from work on February 8, February 11-14, February 18, February 22, and February 25 – March 5, 2008. After a postponement, the investigation was conducted on April 1, 2008. By letter dated April 10, 2008, the Claimant was notified that as a result of the investigation, she had been found guilty as charged, and she was being dismissed from the Carrier's service. The Organization thereafter filed a claim on the Claimant's behalf, challenging the Carrier's decision to discharge her. The Carrier denied the claim.

The Carrier initially contends that on October 29, 2007, the Claimant waived a formal investigation and was assessed a ten-day suspension and a final warning, which specified that if the Claimant were to again "trip" the policy within nine months of signing the waiver, she would be subject to dismissal. The Carrier asserts that the

accumulated occurrences during February 2008, including patterned absences, exceed the "three in thirty" threshold described in the Attendance Policy.

The Carrier points out that the AWOL occurrences can be the basis of separate charges, and the February 24-March 5 absences were not considered, due to the Carrier's acceptance of documentation relating to these absences.

The Carrier then addresses the Organization's position that the Carrier had not proven that the Claimant was AWOL on February 8 and 15, 2008, due to a "corrected" time card reflecting that she had "called in" absent/sick and then was marked as AWOL. The Carrier emphasizes that even assuming a call-in was mishandled, the remainder of the Claimant's uncontested absences constituted a violation of the Attendance Policy.

The Carrier goes on to maintain that, contrary to the Organization's assertion, there is no conflict between the Attendance Policy and Rule 16. The Carrier further argues that the record shows that the Carrier fairly administered the Attendance Policy in the Claimant's case, including giving the Claimant several formal and informal warnings about the consequences of continued attendance issues and issuing directives that the Claimant seek help from the EAP for any issues that may affect her ability to meet attendance requirements.

The Carrier points out that the record shows that the Claimant compiled a total of 223 absences during the period from August 5, 2003, and February 25, 2008. The Carrier emphasizes that whether excused or not, the Claimant missed a year's worth of work during this period. The Carrier maintains that the hearing officer considered the Claimant's reasons for some of her absences, as well as her assertion that she was not

purposely remiss in her attendance obligations, but the hearing officer found that there was no compelling reason to accept them. The Carrier insists that this decision was within the hearing officer's purview.

The Carrier argues that this is a textbook case of chronic absenteeism, and the Claimant has failed to meet the most basic element of the employee-employer relationship. The Carrier asserts that it cannot be expected to function with employees who report on a part-time basis and enjoy generous employee benefits. The Carrier submits that because the Claimant was signatory to the "final warning" provisions of the October 29, 2007, waiver, so her discharge was self-executing.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the Claimant's discharge was arbitrary, extremely harsh, and not based on the facts developed at the hearing. The Organization asserts that Rule 16 was in effect during the time period in question, in addition to the Attendance Policy, but the Claimant was not afforded the opportunity to ascertain her rights in accordance with Rule 16. The Organization argues that although management discussed the Claimant's attendance problems with her on several occasions, there is no evidence that management ever explained to the Claimant any rights to which she may have been entitled under the ADA or FMLA.

The Organization maintains that the record shows that there is much confusion in the Readville Office when someone calls in for whatever reason, and there is even more confusion pertaining to time cards. The Organization points out that the Carrier

submitted three corrected time cards for the Claimant, but failed to produce the original time cards. The Organization suggests that the original time cards may indicate that the Carrier's assertion that the Claimant was AWOL to be incorrect.

The Organization then emphasizes the statement in the decision letter that the Carrier's witnesses did not appear to have a compelling grasp of all aspects of the Attendance Policy – particularly in the area of what might constitute an excused absence. The Organization insists that it is outrageous that the Carrier would allow these same people to enforce that Attendance Policy.

The Organization submits that the Carrier has mishandled the Claimant's situation. The Organization ultimately contends that the instant claim should be sustained in its entirety.

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

This Board has reviewed the record in this case, and we find that there is sufficient evidence in the record to support the finding that the Claimant was guilty of violating the AWOL, the Excessive Absenteeism, and Pattern Absenteeism sections of the Carrier's Attendance Policy. The record reveals that the Claimant waived a formal investigation back in 2007 and was assessed a ten-day suspension and a final warning at that time. The waiver specified that if the Claimant were again to impact the Attendance Policy within nine months, she would be subject to dismissal. Only a few months later, the Claimant accumulated Attendance Policy occurrences, including a pattern occurrence that exceeded the three and thirty threshold described in the Attendance Policy. Therefore,

the Claimant placed herself in a position to be removed pursuant to the previously signed waiver.

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 Claimant in this case had compiled a total of 223 absences during the period from August 5, 2003, to February 25, 2008. It is fundamental that the Carrier has a right to expect employees to come to work on time on a regular basis. Given the fact that the Claimant had signed the waiver in October of 2007 and violated it only four months later, this Board cannot find that the Carrier acted unreasonably, arbitrarily, or capriciously when it terminated her employment. Therefore, the claim must be denied.

AWARD:

The claim is denied.

PETER R. MEYERS
Neutral Member

ORGANIZATION MEMBER

DATED: 11/10/09

CARRIER MEMBER

DATED: 11-10-09