

Special Board of Adjustment No. 1112

Parties to Dispute

Brotherhood of Maintenance of Way)
Employees' Division/IBT)
)
vs)
)
Burlington Northern Santa Fe)
Railway Company)

Case 86/Award 87

Statement of Claim

Appeal of discipline of a twenty (20) day suspension assessed employee Kathy I. Pinto on February 3, 2005.

Background

On October 4, 2004 the Claimant to this case, Kathy I. Pinto, was advised by the Carrier to attend an investigation in order to determine facts and place responsibility, if any, in connection with her alleged failure to report for duty at the designated time and place on Wednesday, September 29, 2004 at the Longmont Section headquarters in Longmont, Colorado.

After postponements an investigation was held on January 12, 2005. The Claimant was advised on February 3, 2005 that she had been found guilty as charged. She was then advised that she was being assessed a twenty (20) day suspension for violation of Rules 1.13 and 1.15 of the Maintenance Operating Rules, effective October 31, 2004.

On March 16, 2005 the Claimant appealed the discipline in accordance with Section 6 seq. of an arbitration agreement signed on July 29, 1998 between the Carrier and the

Organization which created Special Board of Adjustment (SBA) 1112 under the authority of the National Mediation Board. In accordance with the provisions of that agreement this case is now properly before SBA 1112. The neutral member has been granted final and binding powers to issue an Award on this case based on the criteria outlined by the parties in accordance with Section 8 of the agreement creating SBA 1112, and in accordance with Section 3 of the Railway Labor Act.

Discussion & Findings

Rule 40 of the parties' labor agreement is incorporated into this Award by reference and in toto.

The BNSF policies applicable to this case are the following which are cited here in pertinent part.

BNSF Maintenance of Way Operating Rule 1.13

Employees will report to and comply with instructions from supervisors who have the proper jurisdiction. Employees will comply with instructions issued by managers of various departments when the instructions apply to their duties.

BNSF Maintenance of Way Operating Rule 1.15

Employees must report for duty at the designated time and place with the necessary equipment to perform their duties. They must spend their time on duty working only for the railroad. Employees must not leave their assignment, exchange duties, or allow others to fill their assignment without proper authority. Continued failure by employees to protect their employment will be cause for dismissal.

Testimony by the Cheyenne road master at the investigation is that the Claimant was scheduled to work for him as a section worker at Longmont, Colorado on the date of September 29, 2004 and that she did not show up for work. This road master received no

information that the Claimant would not be at work on that date.

The above facts are corroborated by the testimony by the Claimant herself at the investigation. Her testimony parallels that which she gave with respect to an earlier investigation relating to an absence on the date of September 27, 2004. When asked at this investigation if she had complied with the Carrier's rules she states that she thought she did. When asked how she did her response was that it was "...hard to explain...". The other information provided by the Claimant and the union in this case with respect to the reasons for the Claimant's absence on September 29, 2004 repeats information found in the earlier investigation.

The Claimant to this case did not request a leave of absence nor did she provide the Carrier with information along these lines. According to the Claimant she had contacted a Carrier EAP counselor about October 25, 2004 and it was her impression that he was handling her medical files and, apparently, ought to have assumed responsibility for leave requests. She herself had not contacted anyone at the Carrier about her medical situation.

The Claimant had an on-the-job injury on September 24, 2004 and was released from duty at that time with restrictions. She was, according to the instructions found on the follow-up sheet, to have reported for work on September 27, 2004.¹ Or she was to call in if she could not report for work. Nor did she report for work on September 29, 2004 nor did she call in.

The Board can but observe in this case, as it has earlier in Award 86 which involves

¹Record Exhibit C.

this same Claimant, that argument by the Claimant and the Organization is that the Claimant's behavior is explained by a mental depression she was experiencing at the time she did not show up for work.

Boards such as this can only frame reasonable conclusions on basis of information of record. The argument presented in her defense, both by the Claimant herself and her representative, is that she missed work, did not call in to explain why, did not contact the Carrier in any way after her injury on September 24, 2004, nor did she ask for a leave of absence, because she was depressed after her injury. The Claimant also implies, for reasons that remain somewhat inscrutable, that she did see an EAP counselor, although it is unclear from the record if such contact was but cursory, and then assumed that the counselor would make a request on her behalf for a leave.


The only corroborating evidence for the problems the Claimant states she was experiencing is that she was hospitalized for two days, approximately a month after the September 29, 2004 absence. The Claimant states that she saw a psychiatrist three times after that and the union representative alludes to, without explaining, a personal incident in the Claimant's life which precipitated, as can best be figured out by the Board, the Claimant's condition. Boards such as this have ruled on innumerable occasions in the past that assertions are no substitute for evidence. And the evidence present in this case, unfortunately, is insufficient to explain the Claimant's actions with respect to the charges filed against her by the Carrier.

Upon the record as a whole conclusion is warranted that the Claimant was guilty as

charged. On basis of evidence of the type permissible in forums such as this the claim must be denied on merits. Arbitral rulings are based on substantial evidence. This type of evidence has been defined as such evidence "...as a reasonable mind might accept as adequate to support a conclusion..."² As moving party to this case the employer has sufficiently borne its burden of proof.³ The discipline assessed by the Carrier, in view of other information in the file on this relatively short-term employee, was neither arbitrary nor capricious.

Award

The claim is denied.



Edward L. Suntrup, Chair &
Neutral Member

Date: 6/10/05

² Consol. Ed. Co. vs Labor Board 305 U.S. 197, 229. See also Second Division 6419, 8130; Public Law Board 5712, Award 4 inter alia.

³ See Second Division 5526, 6054; Fourth Division 3379, 3482; Public Law Board 3696, Award 1 inter alia. Also Special Board of Adjustment 1112, Award 85.