

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 33442
Docket No. CL-34118
99-3-97-3-670

The Third Division consisted of the regular members and in addition Referee Dana E. Eischen when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Belt Railway Company of Chicago)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11848) that:

1. Carrier violated the effective Clerical Agreement when it withheld Claimant from service without just cause commencing on February 7, 1996;
2. Carrier further violated the Agreement when, following an investigation, it terminated him from service effective February 16, 1996;
3. Carrier shall now restore Claimant Legault to service with his seniority and all other rights unimpaired, shall compensate him for all time lost as a result of the dismissal and shall clear his record of the charges placed against him.”

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.

When this claim arose, the Claimant held the sole Utility Clerk position in the Stores Department. The Claimant's position is responsible for the daily unloading of Company materials received by truck and for the posting of office and U.S. Mail. There is no dispute that the Claimant had an abysmal attendance record or that Carrier Officers previously warned him regarding his frequent absences and unscheduled days off. The record reflects that during the period of December 11, 1995 to January 3, 1996, the Claimant marked off due to the following reasons:

- 12/11/95 - Oral Surgery
- 12/12/95 - Mouth sore from surgery
- 12/13/95 - Back to doctor-infection; will be in 12/14/95
- 12/14/95 - Will not be in rest of week due to virus
- 12/18/95 - Has to go to doctor due to medication
- 12/19/95 - Doctor put him on blood medication
- 12/20/95 - No message today
- 12/21/95 - Has to see doctor
- 12/22/95 - No message today
- 12/26/95 - Has to see Dr. Salud about blood pressure medication
- 12/27/95 - Has to see Dr. Vanderbilt re: migraines & blood pressure
- 12/28/95 - No message today
- 12/29/95 - No message today
- 01/02/96 - Will be off rest of week, has to go back to doctor for another medication
- 01/04/96 - No message today
- 01/05/96 - No message today
- 01/07/96 - Wants to take weeks vacation - has to go back to doctor on 9th.
- 01/09/96 - No message today
- 01/10/96 - No message today
- 01/11/96 - No message today
- 01/12/96 - No message today
- 01/15/96 - Came into office and was told to bring notes from all his attending physicians.
- 01/16/96 - Went to doctor - told him it would take five days to receive forms back.
- 01/22/96 - No message today

01/23/96 - Went to doctor - told him they could not find forms - will be ready next Wednesday.

On many of the dates, the Claimant was a "no show" with no message, and when he did report his absences, he did so by voice mail rather than speaking directly to his Supervisor as Carrier policy mandated. Despite being directed to provide notes from each of his physicians, on January 29, 1996, the Claimant attempted to return to work without the requisite medical verifications. When the Claimant belatedly provided a medical certificate from his attending physician, it indicated his initial treatment commenced on December 18, 1995, whereas the Claimant's first day of absence was on December 11, 1995. Additionally, the record reveals that although the Claimant was released to return to work as of January 16, 1996, as noted above, the Claimant did not report back to the Carrier until January 29, 1996. As a result of the Investigation, the Carrier terminated the Claimant effective February 16, 1996.

There is more than sufficient evidence on this record to support imposition of serious disciplinary action by the Carrier against this employee. The Organization's protests that the Claimant was deprived of a fair and impartial Hearing, "due to the conduct of the hearing officer" are not borne out by the record. The Carrier went to some lengths to demonstrate that it offered to reinstate the Claimant "strictly on a leniency basis" effective April 3, 1996 without pay for time lost, but the Claimant refused the offer and appealed his dismissal to the Board.

On balance, we are persuaded that discharge was a disproportionately severe penalty for the Claimant's time and attendance irregularities, but a six-week suspension without pay for his proven transgression certainly was not unreasonable. The Claimant would have been wise to accept the leniency reinstatement as a "wake-up call" and any loss of pay and benefits after April 3, 1996 was attributable solely to his poor judgement in not taking the opportunity for a "last chance" reinstatement. Based on all the foregoing, the Board shall direct the Claimant's reinstatement without pay. Failure by the Claimant to accept shall be deemed a constructive resignation of all employment rights.

AWARD

Claim sustained in accordance with the Findings.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 23rd day of August 1999.