

PUBLIC LAW BOARD NO. 3166

In the Matter of:)	National Mediation Board
)	Administrator
BROTHERHOOD RAILWAY CARMEN)	
OF THE UNITED STATES)	
AND CANADA,)	
Organization,)	Case No. 53
)	Award No. 45
and)	
)	
CHICAGO AND NORTH WESTERN)	
TRANSPORTATION COMPANY,)	
Carrier.)	

Date of Hearing: April 17, 1984
Place of Hearing: Chicago, Illinois
Date of Award: September 21, 1984

MEMBERS OF THE BOARD

Employees' Member: Mr. Patrick J. Murphy
Carrier Member: Mr. Barry E. Simon
Neutral Member: Mr. John B. LaRocco

STATEMENT OF THE CLAIM

1. Coach Cleaner Yvonne Bell was erroneously charged with excessive absenteeism on December 14, 1982.
2. Coach Cleaner Yvonne Bell was unjustly dismissed from service on December 30, 1982, following investigation held December 27, 1982.
3. That the Chicago and North Western Transportation be ordered to make whole Coach Cleaner Yvonne Bell, restore her to carrier service with all seniority rights, vacation rights, holidays, sick leave benefits and all other benefits that are a condition of employment unimpaired, and compensate her for all lost time plus 6% annual interest on all such lost wages, plus reimbursement for all losses sustained account loss of coverage under health and welfare and life insurance agreements during the time held out of service, in accordance with Rule 35.

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board is duly constituted by an Agreement dated October 12, 1981; and that all parties were given due notice of the hearing held on this matter.

I. BACKGROUND AND SUMMARY OF THE FACTS

Most of the pertinent facts in this case are undisputed. Claimant, a first shift Coach Cleaner at the Carrier's California Avenue maintenance facility, did not report to work on November 22, 23 and 24, 1982 and December 1, 2, 6, 9, 10 and 13, 1982. At an investigation held on December 27, 1982, Claimant testified that she was off on the November dates because she needed to attend to her nine year old daughter who was suffering from tonsillitis. Claimant was absent from her job on the December dates because she was suffering from back pains and a foot ailment. The back pains were a reoccurrence of an injury which she ostensibly incurred on the job some time prior to December, 1982.

The Car Foreman testified that according to Carrier records, Claimant called and gave the Carrier notice that she would be absent on each of the days except December 10, 1982. Claimant emphatically declared that she called on December 10 as well.

Also at the investigation, Claimant submitted medical documents that her daughter had been treated for tonsillitis on November 18, 1982. She also brought in a

physician's note, dated December 6, 1982, showing that she was under his continuing care. In addition, in late December, the Carrier's Medical Director evidently told Claimant that she needed rest and could not continue working.

Following the investigation, the Carrier dismissed Claimant from service for committing excessive absenteeism.

THE POSITIONS OF THE PARTIES

The Carrier contends that it presented substantial evidence that Claimant was excessively absent during the period from November 22, 1982 to December 13, 1982. Since Claimant had just returned from an extended leave of absence on November 10, 1982, she has demonstrated that she is unable to regularly report to work. The Carrier cannot tolerate employees who work irregularly even if some of their absences are excused. In this case, Claimant did not come forward with any medical verification of her illness until after she had been notified that the Carrier was convening an investigation to determine if she had been excessively absent. Moreover, the medical evidence was so inadequate that it lends no support to her testimony.

On the other hand, the Organization argues that Claimant properly complied with Rule 20 of the applicable Agreement by giving the Carrier advance notification that she would be unable to protect her assignment. She had a good and sufficient reason to be absent on each date.

Claimant cannot desert her daughter when the young child needs constant treatment and attention. As to the December dates, the Carrier was aware that Claimant suffered from a recurring job-related injury. Claimant tendered substantial medical documentation justifying all her absences.

III. DISCUSSION

The issue presented to this Board is whether an employee who was absent at an abnormally high rate over a reasonable period of time, but had a good reason for many of the absences, commits excessive absenteeism. While Claimant submitted sufficient medical data showing that she was partially disabled in December, the medical documents (relating to her daughter) concern a time period approximately a week before her November absences. Evidently, Claimant's daughter was able to recuperate without Claimant's presence for a few days. This Board is not convinced that all Claimant's November absences were necessary. However, Claimant did have legitimate excuses for most of her absences.

This Board does not expect employees who are suffering from illness or injury to report to work with the injury because they could pose an on-the-job hazard to themselves or their fellow employees. Simultaneously, to efficiently maintain operations, the Carrier relies on its workers to regularly protect their assignment. Thus, even excused absences can become excessive. Although Claimant was justifiably unable to regularly report to work, she should

have sought a personal or medical leave of absence so the Carrier does not have to call overtime personnel or constantly adjust its forces to accommodate undependable employees.

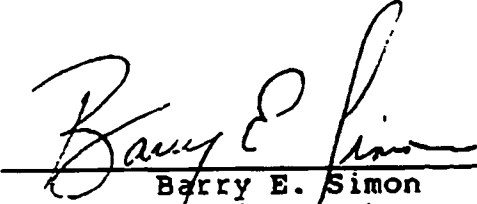
While we find substantial evidence demonstrating that Claimant committed the charged offense, there are several mitigating circumstances which warrant a reduction in the disciplinary penalty. First, as this Board discussed above, Claimant did submit proof to support her contention that she was genuinely ill on the December absences. Though the proof does not exonerate Claimant, the Carrier should have considered the reasons for Claimant's absences when it was measuring the appropriate level of discipline. Second, Claimant called the Carrier in on every day (except one) she was absent. Finally, though Claimant has been in service only two and one-quarter years, she has only one reprimand on her prior record pertaining to poor attendance. Thus, this is a case where progressive discipline could serve to rehabilitate Claimant. We will reinstate Claimant to service with her seniority unimpaired but without compensation for time lost. Upon her return to service, we expect Claimant to regularly and punctually report to work. If she has personal problems, an illness or injury which prevents her from reporting to work, she must take steps to avoid repeated and prolonged absences.

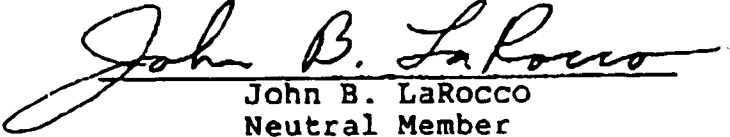
AWARD AND ORDER

Claim sustained to the extent consistent with our Opinion. Claimant shall be reinstated to service with her seniority unimpaired but without compensation for time lost. The Carrier shall comply with this Award within thirty days of the date stated below.

DATED: September 21, 1984


Patrick J. Murphy
Employees' Member


Barry E. Simon
Carrier Member


John B. LaRocco
Neutral Member