

The Second Division consisted of the regular members and in addition Referee Ronald L. Miller when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE: (

(Northeast Illinois Regional Commuter Railroad Corporation

STATEMENT OF CLAIM:

1. That Coach Cleaner R. Tiller was unjustly suspended from the service of the Northeast Illinois Regional Commuter Railroad Corporation for a period of five (5) days actual suspension without pay beginning December 24, 1986 through December 30, 1986.

2. That the Northeast Illinois Regional Commuter Railroad Corporation violated Rule 29(a) and (b) of the current Agreement dated October 1, 1986 by not providing Coach Cleaner R. Tiller with a proper charge prior to the hearing.

3. That Coach Cleaner R. Tiller was unjustly dealt with by the Northeast Illinois Regional Commuter Railroad Corporation in that he did not notify the Carrier as early as possible that he was unable to protect his assignment and was under doctor's care for the days he was absent.

4. That the Northeast Illinois Regional Commuter Railroad Corporation be ordered to compensate Coach Cleaner R. Tiller in the amount of eight (8) hours pay at the applicable rate for each and every day of this unjust suspension beginning with December 24, 1986 through December 30, 1986.

5. That the Northeast Illinois Regional Commuter Railroad Corporation be ordered to pay Coach Cleaner R. Tiller interest at the rate of 12% per annum for any and all compensation that he may receive as result of this claim.

FINDINGS:

The Second Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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 waived right of appearance at hearing thereon.

The Claimant did not report for work on November 14, 1986, nor did he work the following scheduled days: November 17, 18, 19, 20 and 21, 1986. On November 14th, the Carrier received a telephone call from a woman who identified herself as Claimant's girlfriend. She stated that Claimant had been in an automobile accident the night before and would not be reporting for work. When Claimant returned to work on November 24, 1986, he stated that he had been absent due to a backache. Subsequently, Claimant was charged with failure to comply with Rule 14 (not providing a bona fide reason for his absences from work ... he used two different reasons to justify his absences). Following an investigative hearing, Claimant was disciplined with a five (5) days suspension.

There is no reason to doubt that a woman called the Carrier on November 14 to give notice of Claimant's absences. Moreover, it is an acceptable practice for a second party to give the required notice. This was done on Claimant's behalf in the past. During the period of his absence, notice was also given to the Carrier. A physician's note (dated November 21, 1986) indicates that Claimant was being treated for back pain, and could return to work on November 24, 1986.

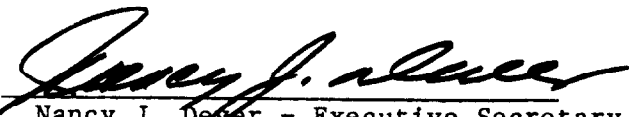
The Claimant contends that he never authorized anyone to give notice for him on November 14th and that he personally could not give notice on the 14th due to drowsiness caused by prescribed medication. He did personally notify the Carrier on November 17th (the next scheduled day of work after the 14th).

The Carrier has not established with substantial evidence that Claimant violated Rule 14. The Carrier is entitled to truthful reasons when absence notices are given. However, the Carrier has not shown that Claimant knowingly and intentionally falsified the reason for his absence. Furthermore, the Carrier has not convincingly established that Claimant is at fault for the difference in the reasons. The reason given by Claimant is consistent with the physician's statement. Whether authorized or not, notice was given on Claimant's behalf on November 14th. The reason stated by the woman may or may not be related to Claimant's back condition. The record is void on this point. The Claimant is to be paid wages for the five (5) days and his record is to be cleared of any notation regarding the disciplinary suspension. Interest on the wages is not to be paid.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. DeSer - Executive Secretary

Dated at Chicago, Illinois, this 19th day of October 1988.