

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

*Harold M. Weston, Referee*

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**CHICAGO, ROCK ISLAND AND PACIFIC  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of Dining Car Steward Walter W. Kaluznick for reinstatement, with seniority rights and vacation privileges unimpaired, and compensation, at the applicable Steward's rates December 15, 1958, and each subsequent date thereto until restored to service, account being dismissed from the service of the Chicago, Rock Island and Pacific Railway Company of June 9, 1958, without first being given a formal investigation.

**EMPLOYES' STATEMENT OF FACTS:** Under date of April 16, 1958, Steward Walter W. Kaluznick was granted a 90 day leave of absence by General Superintendent of Dining Cars Mr. M. V. Dolan, which was mailed to his home address in Minneapolis, Minnesota by registered mail. The notification of being granted the leave reads as follows:

"Chicago, April 16, 1958"

"Mr. Walter W. Kaluznick  
7221 18th Ave., So.  
Minneapolis, Minn.

"You have been granted a leave of absence effective with April 16, 1958 account of illness of self.

This leave of absence expires upon July 16, 1958 and unless you return to active service or seek a renewal of this leave of absence on or before that date your record will be closed."

/s/ M. V. Dolan  
General Supt. Dining Cars"

The following quoted letter dated April 17, 1958 over the signature of Wayne S. Hagen, M.D. is on file and is quoted below for your Honorable Board's information:

Kaluznick made no request for leave of absence on the above basis. His leave was granted because of his physical disability. He remained in Minneapolis, his home terminal, to do work in many respects similar to that from which he sought leave of absence due to "physical disability."

To this date Kaluznick himself has not offered any explanation of his refusal to reply to Dolan's letters, filed a proper claim, or explained how he could work in "Stels" restaurant but not the job where he had seniority.

By his very silence Kaluznick has, in effect, admitted his guilt of fraudulently using leave of absence which was granted **for disability**. Had he or his representative contested this fact in any way they should have stepped forward with the challenge within the fifteen days after being notified by Mr. Dolan to return to work. Most assuredly, if their had been any thought that Kaluznick was mistreated, or that the agreement had been violated, Claimant could and should have invoked Sec. III (a) of Article 12 of the Stewards' Agreement immediately upon being notified that his record was being closed.

Under the circumstances evident in this case, detailed above, Carrier respectfully requests your Honorable Board to deny the claim presented in behalf of former Steward W. W. Kaluznick.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organization's representatives.

**OPINION OF BOARD:** Claimant is a Dining Car Steward whose employment was terminated on June 9, 1958, without an investigation having been held. He had been granted a ninety day leave of absence on April 16, 1958, due to illness, but about five weeks later, on May 23, was notified by Carrier that his leave was cancelled since it had received information that he was engaged in business for himself; the same communication ordered Claimant to report to work no later than June 7, 1958 or to tender his resignation. He did not report or communicate with Carrier in any way by the appointed date, June 7, and was informed on June 9, 1958, his employment had been terminated.

It is Carrier's position that the investigation procedure is inapplicable since this is not a dismissal or discipline case and Claimant voluntarily severed his employment relationship by his own conduct. On the other hand, Petitioner maintains that, by its failure to hold an investigation Carrier violated Article 12 of the controlling Agreement which prescribes that a Steward will not be disciplined or dismissed without first being accorded a fair and impartial investigation.

We would agree with Petitioner's contention if Claimant's employment had been terminated immediately on the basis of the information allegedly received as to his own business, for an investigation would be manifestly essential to determine the accuracy of that information and the reliability of its sources as well as to afford Claimant an opportunity to explain the circumstances. An analysis of the record, however, shows that Claimant was given a reasonable time, two weeks, before any definitive action would be taken. If he felt aggrieved by Carrier's notification of May 23 he certainly could have contacted Carrier some time during that two week period and attempted to present his version of the matter. In our opinion, Carrier was entitled to at least that consideration and we are not disposed to approve Claimant's taking the matter into his own hands by failing even to com-

municate in any way with Carrier during these two weeks or indeed until July 13 and then merely to request, through his physician, a further extension of the leave of absence. This record does not bespeak the good faith that Carrier had a right to expect of Claimant.

We do not regard the leave of absence as a cloak of complete immunity that protects Claimant in this case. There is no evidence that he was unavailable at the time or physically incapable of reaching the Carrier. In the light of these circumstances, we are constrained to find that Claimant's failure to communicate with Carrier during the aforementioned fourteen days betrays an arbitrary disregard of fair employment relations that should not be encouraged. The claim will be denied.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois this 21st day of March, 1961.