

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19910

Docket Number CL-19994

Frederick R. **Blackwell**, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:(

(Chicago, **Milwaukee**, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7169)
that:

1) **Carrier** violated the Clerks' Rules Agreement at Chicago, ILL. when it failed to notify **employee** L. R. Grubb in writing of precise charge and the finding of him guilty and suspension from service for 15 days was unfair, unreasonable and not supported by record; therefore the disciplinary action taken was without proper cause and such action was arbitrary, capricious, unfair and unreasonable.

2) Carrier shall be required to clear the record of **employee** L. R. Grubb and compensate him for all time Lost.

3) Carrier shall be required to pay **on** the total amount claimed in Item 2 above, 7% es interest commencing July 22, 1971 and compounded annually until the claim is paid in full.

OPINION OF BOARD: Claimant, with seniority date in 1947, is regularly assigned to a clerk position in Carrier's office at Bensenville, **Illinois**. Following a July 11, 1971 hearing, he was found guilty of failure to protect his assignment and suspended from actual service for fifteen (15) days.

The Petitioner contends that:

1. Claimant was not given proper written notice of "precise" charge.

2. The evidence developed at the investigation does not sustain the action of the carrier.

3. The Claimant was denied due process when a party other than the Hearing Officer **made** the decision and assessed discipline.

4. The Employees state they have shown that the record of the Claimant should be cleared and that he be compensated for all time lost plus interest of 7%.

We **have** considered but find no merit in the procedural issues raised by Petitioner in 1 and 3 above. In respect to 4 above, as interest was not properly raised on the property, we do not regard the interest issue as properly before us; indeed, in handling on the property the Organization predicated its entire case on the contention in 2 **above**. Therefore, we shall consider the merits of point 2, i.e., was the hearing evidence sufficient to sustain the finding of guilt and assessment of a discipline of 15 days suspension.

The hearing transcript consists of two pages of substantive testimony and a third page containing signatures only. The sole testimony on the cause of Claimant's absence from his assignment was given by claimant, as follows:

"Q16. Mr. Crubb, why didn't you report for work on this day?

A. I was sick, shall I elaborate on that -

Quillinan - yes

Saturday, July the **10th**, I finished my **tour** of duty at 3:00 p.m. I went home, mowed the lawn, and then I got sick with a diahhrea stomach flu. I would say that would be in the neighborhood of **8 or 8:30** in the evening. I had taken **pepto bismol**, and went to bed. I was up a half a dozen times more during the course of the night, getting no rest. So about 4 o'clock in the morning of July 11th, I made a trip to the bathroom. My wife said she was going to call and lay me off. I went back to bed, finally I went to sleep. I did not hear the alarm. My wife called at some time between **7:30 and 8:00 a.m.** I did not know anything about that at that time either.

9.17. Mr. Grubb, do you admit that you failed to protect your assignment at 7:00 **a.m.** on July the 11th?

A. Through no fault of mine, yes."

Petitioner contends that this evidence presented a situation governed by Rule 25(a) which provides that, when an employee is detained from work due to sickness, he shall notify his supervisor "as soon as possible" and shall be regarded as on leave of absence. Carrier counters by saying claimant could have called as early as 4 a.m., which he failed to do.

On the whole record we must concur with Petitioner. The transcript of the July **11**, 1971 hearing simply shows that **claimant was** sick and that his wife called Carrier at about 8 a.m. The hearing transcript shows that Carrier made no issue of, or offered any evidence on, the contention that claimant should have called in earlier than 8 a.m. Such an issue was raised in a August **11**, 1971 appeal hearing on Carrier's disciplinary decision; however, since this was after the hearing record was closed, it cannot be included in our considerations of the dispute. Consequently, in the record before us, there is no evidence to support the finding of guilt and we therefore conclude that Carrier's action was **unreason-**able and arbitrary. We shall sustain Parts 1 and 2 of the claim and dismiss : **3.**

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Psge 3

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 ~~Employees~~ Involved in this dispute are respectively Carrier and ~~Employees 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

The Agreement was violated.

A W A B D

~~Parts~~ 1 and 2 of the claim are sustained; part 3 ~~is dismissed~~.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulose
Executive Secretary

Dated at Chicago, ~~Illinois~~, this 7th day of September 1973.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19910
Docket Number CL-19994

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
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PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (CL-7169)
that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Ill. when it failed to notify employee L. R. Grubb in writing of precise charge and the finding of him guilty and suspension from service for 15 days was unfair, unreasonable and not supported by record: therefore the disciplinary action taken was without proper cause and such action was arbitrary, capricious, **un-** fair and unreasonable.

2) Carrier shall be required to clear the record of **employee** L. R. Grubb and compensate him for all time lost.

3) Carrier shall be required to pay on the total **amount** claimed in Item 2 above, 7% as interest commencing July 22, 1971 and compounded annually until the claim is paid in full.

OPINION OF BOARD: Claimant, **with** seniority date in 1947, is regularly assigned to a clerk position in Carrier's office at Bensenville, Illinois. Following a July 11, 1971 hearing, he was found guilty of failure to protect his assignment and suspended from actual service for fifteen (15) days.

The Petitioner contends that:

1. Claimant was not given proper written notice of "precise" charge.

2. The evidence developed at the investigation **does** not sustain the action of the carrier.

3. The Claimant was denied due process when a party other than the Hearing Officer made the decision and assessed discipline.

4. The Employees state they have shown that the record of the Claimant should be cleared and that he be compensated for all time lost plus interest of 7%.

We have considered but find no merit in the procedural issues raised by Petitioner in **1** and 3 above. In respect to 4 above, as interest was not properly **raised an** the property, we do not regard the interest issue **as prop-**erly before us; indeed, in handling on the property the Organization predicated its entire case on the contention in 2 above. Therefore, we shall consider the merits of point 2, i.e., was the hearing evidence sufficient to sustain the finding of guilt and assessment of a discipline of 15 days suspension.

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On **the** whole record we must concur with Petitioner. The transcript of the July 11, 1971 hearing simply shows that claimant was sick and that his wife called Carrier at about 8 a.m. The hearing transcript shows that Carrier made no issue of, or offered any evidence on, the contention that claimant should have called in earlier than 8 a.m. Such an issue was raised in a August **11**, 1971 appeal hearing on Carrier's disciplinary decision; however, since this was after the hearing record was closed, it cannot be included in our considerations of the dispute. Consequently, in the record before us, there **is** no evidence to support the finding of guilt and we therefore conclude that Carrier's action was unreasonable and arbitrary. We shall sustain Parts 1 and 2 of the claim and dismiss : **3.**

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 ~~Employees~~ involved in this dispute are respectively Carrier and ~~Employees~~ 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~~

The Agreement ~~was~~ violated.

A W A R D

~~Parts 1~~ and 2 of the claim are sustained; part 3 ~~is~~ dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pankos
Executive Secretary

Dated at Chicago, ~~Illinois~~, this 7th day ~~of~~ September 1973.