

NATIONAL RAILROAD ADJUSTMENT BOARD

THIBDDMSION

Award Number 22176  
Docket Number a-21823

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( **Steamship** Clerks, Freight **Handlers**,  
( **Express** and Station **Employees**  
( Consolidated Bail Corporation  
( (Former **Penn** Central Transportation **Company**)

STATEMENT OF CLAIM: Claim of the **System Committee** of the Brotherhood  
(GL-8209) that:

(a) The Carrier violated the **Rules Agreement**, effective **February 1, 1968**, particularly **Rule 6-A-1**, when it assessed discipline of dismissal, later reduced to the **90 days** held out of **service**, on **B. D. Nardis II, Clerk, Enola, Pennsylvania.**

(b) **Claimant** Nardis' record be cleared of the charges brought against him on **July 24, 1975.**

(c) **Claimant** Nardis be compensated for wage loss sustained during the period out of **service.**

OPINION OF BOARD: **B. D. Nardis, II, was** dismissed by the Carrier. **This** discipline was later reduced to holding the Claimant out of service for ninety days.

The Claimant requests **that this** Board clear his record of the **charges** brought against him in this case and that he **be** compensated for **the wages lost** during the ninety days he **was** held out of **service.**

The Carrier charged the Claimant with three specific alleged violations:

1. Using sickness as a subterfuge for being absent from duty from **March 6, 1972**, until **May 29, 1975.**
2. Falsely claiming compensation for sickness for **March 6, 7, 8, 11 and 12, 1972**, under the provisions of 4-I-1 of the **BRAC** Schedule Agreement while attending **Shippensburg State College.**

3. **Performing volunteer work** on Ski Patrol at Ski Roundtop, Dillsburg, while being absent from duty allegedly from sickness.

The Organization first alleges a procedural deficiency in regard to the notification for the disciplinary hearing. It is held that the **Company complied** with the **Agreement** in regard to the notification for the investigation. The **argument** advanced by the Organization on this point is without **merit**.

The Carrier first alleges that the **Claimant** utilized sickness as a **subterfuge** for being absent from duty from March 6, 1972, until May 29, 1975. The Carrier asserts **that** the real purpose for the absences **was** to **permit** the **Claimant** to attend college, and therefore he should have sought a leave of absence pursuant to the applicable rules. We have reviewed the Transcript of **the** discipline hearing and conclude that it contains **many** inferences and that the presentation to the **Board makes** additional inferences predicated upon the initial testimony. We distinguish this type of reasoning **from** conclusions predicated upon a series of facts. We do not believe that the inferences established in the record rise to the level of circumstantial evidence sufficient to sustain the charge **made** by the Carrier.

In regard to the second charge that he falsely **claimed compensation** on **certain** designated days, the evidence consists chiefly of a Carrier **employee** testifying that he checked the records to **determine** the date that registration for college occurred and the date that **classes** actually began. There is no direct evidence in this record that the **Claimant** attended Shippensburg State College on the specific dates alleged in the second allegation; nor is there sufficient **circumstantial** evidence introduced to find that the **Claimant** **is not** entitled to **claim compensation** for **sickness** on the specified dates.

In regard to the third allegation, it is held that even if true, this allegation standing alone would not **form** a basis for discipline. It is but an incident of evidence to be considered in the total presentation.

**Therefore**, it is the opinion of the **Board** that the Carrier has failed to sustain sufficient allegations to warrant the assessment of discipline in this case. **Therefore**, the **claim** is sustained.

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

That the Agreement was violated.

A W A R D

**Claims** sustained.

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

ATTEST:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of August 1978.

