

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22203
Docket Number CL-22137

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(Minnesota Transfer Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8368) that:

(1) The Carrier violated the provisions of the July 1, 1958 Rules Agreement by discharging Mr. T. E. Duffy, Clerk, St. Paul, Minnesota from the service of the Company, effective November 21, 1975; and,

(2) The Carrier shall now be required to reinstate Mr. T. E. Duffy to the service of the Company effective November 21, 1975, compensated for all loss of compensation, continuance of insurance coverage, sick leave and vacation allowance.

OPINION OF BOARD: On November 20, 1975 Claimant was instructed to report for an investigation on November 26, 1975, concerning asserted unauthorized absence from duty on November 19 and 20, 1975.

On November 21, 1975 the Claimant's position (No. 65) was bulletined effective December 1, 1975 with the notation:

"EXPECTED DURATION: PERMANENT"

When the Carrier's Special Agent delivered the notice of investigation (on November 24, 1975), according to the Claimant, the Agent was advised that the Employee had a doctor's appointment scheduled on the next day, and on the 25th, Claimant's mother allegedly notified the Carrier that the Employee had been hospitalized. Nonetheless, the Carrier conducted the investigation without the Claimant.

On November 28, Carrier advised the Claimant that he had failed to appear at the investigation, did not request a postponement, and that "his services...are terminated."

The Organization urges that the records confirm that the Claimant was hospitalized from 10:30 A.M. on November 25, 1975 until December 12, 1975, and the fact that Carrier did not attempt to verify the information given by the Claimant's mother is indicative of the failure to conduct a proper hearing - which is further emphasized by Carrier's posting of a bulletin of a 'permanent vacancy' prior to the investigation hearing.

At the investigation, Claimant's Supervisor testified that Claimant had advised that he would report for duty on both November 19 and November 20, yet he failed to do so. Further (and in accordance with the notice of investigation) the Employee's prior record was considered. Finally, the Supervisor stated that in his "personal opinion" (based upon certain stated conclusions) the Claimant was an "incurable alcoholic."

During the appellate procedure on the property, the Vice President and General Manager denied that the Special Agent was advised, on November 24, 1975, that the Claimant had a medical appointment on the following day, but he concedes that a telephone call was received on November 25 from Claimant's mother, advising that Claimant was "going to the hospital." However, he points out that "no mention was made of his being confined there and no request was made for a postponement of the investigation."

Although we are unable to find any such testimony in the transcript of investigation conducted on November 26, 1975 (even considering the gratuitous personal opinion), the same Carrier Official stated, in the letter cited above, that the Claimant:

"...failed to appear for work on two consecutive days because he was drunk and he had been drinking before the events leading to this investigation."

Although the Organization pointed out, on the property, that there was no evidence of record to substantiate the above citation, Carrier failed to retract it.

The parties have argued the basic factors which they feel are appropriate concerning the conducting of a hearing without the Employee being present. The fact that a postponement was not sought may very well be explained by the Claimant's hospitalization. In any event, when the Claimant did not report at the designated time, the knowledge that he was hospitalized might have prompted some inquiry by the Carrier as to his whereabouts in a matter of this magnitude rather than the legalistic

approach which was followed here. But, it is unnecessary to rely solely upon that aspect of the case.

[In addition to the decision to proceed with the investigation without making inquiry as to Claimant's whereabouts, Carrier (1) demonstrated a prejudgment when it posted a "permanent" vacancy prior to the investigation, (2) accepted - and assumedly relied upon - a "personal opinion" concerning a highly complex medical problem from an individual who is not an expert in that field, and (3) made unsubstantiated "factual" assertions concerning alleged "drunkenness," when the Claimant was cited for other infractions.]

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It may very well be that this Claimant suffers from a severe problem which has a direct bearing upon the employment relationship. But, even if that is the case, it is not a basis for ignoring the requirement that he be afforded a fair and impartial hearing and handling of the dispute. Carrier's action considered in its entirety deprived him of that right.

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A portion of the claim seeks "continuance of insurance covers ge ." Awards of this Board have determined "no proper basis" for such a claim. see Award 20991 and 21121.

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

That the **parties** waived oral bearing;;

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 violated.

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Claim sustained except for that portion dealing with "insurance coverage."

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauler

Dated at Chicago, Illinois, this 13th day of October 1978.

