

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22365
Docket Number CL-22017

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline **and**
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(
(**Elgin**, Joliet and Eastern Railway **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(**GL-8366**) that:

1. The Carrier violated the effective Clerks' Agreement when under date of March 4, 1976, it suspended Clerk Lucille Bradley from its service for a period of seven (7) days **commencing** on March 13, 1976, based upon charges which were not proven.

2. The Carrier **shall** now compensate Ms. Bradley for all time lost as a result of this suspension from service and clear her record of the charges placed against her.

OPINION OF BOARD: In this case Claimant appeals the imposition of a seven-day suspension following a hearing in which Carrier found her guilty of the following charge:

" . . . absenting yourself from **your** assigned duties from about **9:45** AM to about **11:15** AM on Tuesday, February 10, 1976 during which period you were laying down in the women's lounge in the basement of the Agent's Office in Joliet, Illinois."

The thrust of the charges against Claimant is that she Was lying down for one **and one-half** hours in **the ladies'** lounge **during** a **time** when she **was** supposed to be at work cleaning that **lounge**. If Carrier had proven that to be true then we would have no occasion to disturb the suspension, especially in light of Claimant's poor discipline and **performance** record. The sole evidence to support the charge, h-er, is the testimony of two Carrier witnesses, one of whom said she saw Claimant in **repose** at **9:45** a.m. and another who saw her resting on the sofa at 11:00 a.m. on February 10, 1976.

The latter **employee**, Miss **Marvic**, informed her Supervisor **and** the Agent and together they went to the ladies' room at about **11:15** a.m. where they found Claimant awake and sitting on the sofa. The Agent and the Supervisor inquired if Claimant was ill and she responded that she had felt faint and had lain down because she felt that she might pass out while she was doing her work. She declined an offer by the Supervisor to see a physician or to go home but said she now felt that she could continue her duties.

Part of Claimant's duties include cleaning the ladies' lounge in which she is accused of sleeping. She testified without contradiction **that** on the morning in question she cleaned the sinks and toilets, waxed the floor and cleaned a closet across the corridor from the lounge. She admitted that she was lying down **at** the time she was seen by **the** two Carrier witnesses, but **asserts** that between those times she was performing her assigned duties. She testified that she felt drowsy or faint as she was working and attributed that condition to ingestion, before coming on duty, of a **Valium** capsule prescribed by her physician.

Circumstantial evidence can **be persuasive and in an** appropriate case might be sufficient to carry a burden of proof. It is not sufficient **in** this case. The only thing proven is **that** Claimant was in repose at **9:45** a.m. and again at **11:15** a.m. Her testimony is essentially unrefuted that she performed her duties during the time period in question, except for resting when she felt faint. Nor is the bona fides of her illness persuasively brought into question herein. Absent conjecture and speculation, there is not sufficient evidence on this record to support the charges placed against her. She cannot be found guilty on such flimsy evidence, even if her prior discipline record is bad. Guilt of the instant charge cannot be imputed on the basis of a bad reputation or prior misconduct. Prior discipline becomes relevant to the question **of** the appropriate amount of discipline to be imposed only after Carrier first establishes culpability for the instant offense. **Based** upon all of the foregoing the claim must be 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 **Employes** involved in this dispute are respectively Carrier and **Employes** 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

Claim **sustained**.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **30th** day of **March 1979**.