NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 22412
THIRD DIVISION Docket Number CL-22396

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8512) that:

1. The Carrier withheld Clerk G. Weidner from its service for a period from August 18 through August 31, 1976 without just cause and in violation of the applicable Agreement.

2. The Carrier shall now be required to compensate Mr. Weidner for eight (8) hours' pay at the pro rata rate of his position for each of dates August 18, 19, 20, 23, 24, 25, 26, 27, 30 and 31, 1976.

OPINION OF BOARD: When Claimant reported for duty on August 18, 1976 - after having been absent due to illness on the preceding day - he was instructed to report to a clinic for examinati by Carrier physicians.

At the clinic, Claimant furnished a statement from his personal physician indicating that his absence resulted from a previous off-duty injury. Nonetheless, Carrier's physician advised that examination by a psychiatrist or psychologist was indicated. After a number of such examinations (during which he was withheld from service), Claimant returned to work on September 1, 1976.

Claimant asserts that Carrier's action amounted to harassment, and was discipline without due process; resulting in a denial of ten days' pay.

On the property, Carrier asserted that Claimant requested to be off on August 17, 1976 in order to drive his niece to the airport. Because of the ". ..excessive number of days he had already

taken off for sickness and personal business, and in view of the fact that this request came at the time of the month when the work is the heaviest..." he was advised to find another way to get his niece to the airport. On the 17th of August, he called in ant reported sick. He was told to bring a medical certification when he reported to work. He did so, but the certificate was so void of pertinent details it caused Carrier to send him to the Company Doctor to determine if he was able *to* work. That visit led to psychological evaluation.

While the matter was under consideration on the property, Carrier advised:

> "The fact is that up to the date of this incident, during the Year 1976 Mr. Weidner had been absent for 74 days because of illness or personal reasons. This does not include the partial days that he was absent by coming in late or leaving early. During the period in question there were 159 work days on which Mr. Weidner was scheduled to work of which he was absent 20 days on vacation, leaving a total of 139 work days. Inasmuch as Mr. Weidner had worked less than 50% of the time for that portion of the year up to and including August 17, the Company had good reason to question his physical ability to perform his duties with reasonable regularity.
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> During any extended period of absence for illness, stay in a hospital or off duty injury, it is this Company's policy to require a physical examination. Inasmuch as Mr. Weidner alleged that his last absence prior to this incident was a result of an off duty injury, he was required to go to the doctor to determine the extent of his injuries and to determine whether or not he was physically able to work as a clerk full time.
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> The Company doctor's initial examination caused him to believe that Mr. Weidner should see a psychologist. Arrangements were made for a first visit followed by, I believe, two additional visits, following which the psychologist, through our Company doctor recommended that he be returned to service and that he continue as a private patient receiving further therapy. Apparently the therapy which Mr. Weidner received as result of the

"complained about incident has resulted in some improvement because he has not been off work as much since his return as he was prior thereto."

While the Claimant did not contradict the Carrier's version of the facts which surrounded the absence, he did remind Carrier that it had hired him with full knowledge of certain physical ailments and disability. Although Carrier denies said knowledge, we find it unnecessary to comment at length on that dispute because there is no evidence of record to suggest chat those asserted ailments are pertinent to this absence and the Carrier's action.

Carrier invites our attention to Rule 63:

"(a) Employes coming within the scope of this agreement wiil submit themselves to physical examination by the Company doctor only when it is apparent their health or vision is such that examination should be made. Being disqualified by Chief Surgeon, the right of appeal for further handling between the officers of the Company and General Chairman is agreed upon.

(b) Efforts will be made to furnish employment (suited to their capacity) to employes who have become physically unable to continue in service in their present positions."

It states that it nas aiready complied with Rule 63(b) and the events of 1976, including the August 17, 1976 absence, gave it abundant basis to act under 63(a).

While we do not lightly disregard the Awards cited by the Organization in support of the claim, we find that they dealt with different types of factual circumstances and divergent rules. Here, Rule 63(a) grants Carrier certain rights to require physical examinations when circumstances indicate that route to be appropriate. We are inclined to feel that the facts of this record justify Carrier's action.

While there is always a tendency to scrutinize Carrier's actions in this type of a dispute to assure that the period of time off of the payroll was held to a minimum, under the authority of a vast number of Awards, we cannot find that ten (10) days was excessive in this case. See, for example, Award 13, Public Law Board No. 1668 and Second Division Awards No. 7388 and No. 7151, among others.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

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