

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22766  
Docket Number CL-22770

Joseph A. Sickles, Referee

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

**PARTIES TO DISPUTE:** (

(The Baltimore and Ohio **Railroad** Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(GL-8677) **that:**

(1) The Carrier violated the Rules of the Effective **Clerk-**  
Telegrapher Agreement when, following **investigation** held **on August 10,**  
1976, it arbitrarily and capriciously suspended Mr. George W. **Klug**  
from service, and

(2) Carrier, because of such wrongful action, shall clear  
the service record of Mr. **Klug** in connection with discipline assessed  
and compensate him for all wage losses suffered during the period  
September 2, 1976 to September 14, 1976, a total **of** seven (7) work-days.

**OPINION OF BOARD:** **On** August 3, 1976, the Carrier advised **the**  
Claimant to attend an **investigation** concerning  
an allegation that he had failed to protect his assignment **on** July 28,  
1976, **on** which date he had falsely claimed **sickness**.

Subsequent to the investigation, Carrier notified the  
**Employee** that he was assessed five (5) actual days suspension.  
**Immediately** thereafter, the Carrier amended the imposition of dis-  
cipline to show seven (7) days suspension because of a two day  
"**overhead** suspension" which was activated by the incident here  
under review.

The record demonstrates that **on** the day in question,  
Carrier Officials received information from an undisclosed source  
that the Claimant would possibly be in attendance at a local **race**  
track that day. When the Official learned **that** the Claimant was  
absent from work, he and another Supervisor arranged to go to the  
race track to investigate. They testified **that they clearly** "  
**observed** the Claimant at close range, even though **the** Claimant

categorically denied that he was present at the race track **on** the day **in** question. In addition, the **Employee** presented certain signed statements from others indicating that he was not at the race track at the stated time.

The Claimant was afforded an opportunity to present a medical certification from the physician, however he declined to do so.

This case presents a classic credibility dispute, and we are asked to disturb the Hearing Officer's findings in that regard.

There is ample evidence of record to support the Hearing Officer's conclusions, and it is clear that the **individuals who** testified against the Claimant were sufficiently familiar with him so as to avoid a case of mistaken identity

Accordingly, we will deny the claim.

**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 not violated.

**A W A R D**

**Claim denied.**

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

ATTEST:

*A.W. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.

