

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23114**
Docket Number CL-23266

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and **Steamship** Clerks,
(Freight Handlers, Express and Station **Employees**
(
(The Baltimore and Ohio Chicago Terminal Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-8935)
that:

(1) Carrier failed to adhere to the Agreement between the Parties when, on **March 2**, 1979, Utility Clerk Stephen P. Edwards was improperly assessed discipline of dismissal from Carrier's **service**, and

(2) As a result of such impropriety, Carrier shall reinstate Mr. Edwards to its service with all rights unimpaired and compensate him for all wage losses suffered since March 2, 1979, the date held from service.

OPINION OF BOARD: **Claimant was** employed by the Carrier as Utility Clerk. On January 20, 1979, he was notified by Carrier's **Manager** Terminal **Services**, Barr Yard, **Riverdale**, Illinois:

"**You** are charged with submitting falsified doctors' certificates dated **July 21**, 1978; October 26, 1978; **and** January 8, 1979; in order to collect sick time payment for July 23, 24, 25, 26, 1978; October 21, 22, 25, 1978; **and** January 6, 7, and 8, 1979.

"**Attend** investigation at Conference/Training Room, **Second** Floor, Barr Yard Terminal Service Center Building, 13600 South **Halsted** Street, **Riverdale**, Illinois, at 9:00 A.M., **on** Friday, January **26**, 1979.

"**You** are responsible for arranging for a representative **and** any **witnesses** you may desire."

The investigation was postponed by agreement **and** completed on February 23, 1979. A copy of the transcript of the investigation has been **made** a part of the record. We have carefully reviewed **the** transcript **and find that** none of claimant's substantive procedural rights **was** violated.

The **Organization** contends that that portion of Rule 47(a) reading:

"The investigation shall be held within ten (10) days from the date when charged with the offense or held from service...."

was violated as the last date mentioned in the letter of charge was **January 8, 1979**, and claimant was notified of the charge January 20, 1979, with investigation scheduled for January 26, 1979.

In our opinion, the Organization has misconstrued the rule. The ten-day time limitation applies from the date of the charge, not from the date of the offense.

The Organization also complains because the same officer preferred the charge, conducted the investigation and rendered the decision. We have not been referred to any Agreement provision as to who shall prefer charges, **conduct the investigation** or render the decision. Furthermore, the procedure complained of has been upheld by **numerous** decisions of this Board.

The Organization contends further:

"There is little excuse for the managerial per-s-1 of the Carrier to ignore the principle that discipline investigations must be **handled** akin to a trial court...."

Disciplinary investigations are not **criminal** proceedings. The Board has held:

"**Disciplinary** proceedings are not court proceedings, where strict adherence to rules of evidence is required...." (Third Division Award 19993)

and

"An investigation is not a **criminal** proceeding **and** strict rules of evidence do not apply." (First Division Award 18119)

As to the merits of the case, the evidence is clear that the claimant fraudulently obtained doctors' certificates to justify **payment** of sick leave. Claimant admitted that he purchased the **documents** and that he was not treated by a doctor.

There is no proper basis for the Board to interfere with the discipline imposed.

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:;


Executive Secretary

Dated at Chicago, Illinois, this 15th day of **January 1981.**