

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23232  
Docket Number CL-23039

James F. Searce, Referee

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

STATEMENT OF CLAIM: **Claim of the System Committee of the Brotherhood (GL-8866) that:**

1. **Carrier** violated the effective Clerks' Agreement when, following an investigation on November 2, 1978, it **suspended** Clerk Robert Muehlhausen from service for a **period** of two days, **November 13 and 14, 1978;**
2. **Carrier** shall now compensate Mr. Muehlhausen for all the lost as a result of **this suspension from service and shall clear his record of the charges placed against him.**

OPINION OF BOARD: After the **Claimant failed to report for duty on October 20, 1978,** he was notified by the **Carrier** to report for a hearing, the **purpose of which was to "determine (his) responsibility, if any, in connection with (his) repeated absence from (his) 7:30 a.m. Stores Department chauffeur's assignment..."** At the hearing **Claimant produced a medical receipt from a dentist dated "10-20-78" stating "received from Muehlhausen twenty dollars for Professional Services."** i o n **handwritten;** other words imprinted on the form). As a result of this **investigation,** the **Claimant** was assessed **at two-day suspension.** The **Organization** contested the disciplinary action on the basis that the charge against **him** was not **specific** and did not cite any **rules violations.** The **Organization** also asserts procedural error by the **hearing officer,** including receipt of the **grievant's** absentee ad sickness record for the 1978 year before the hearing, prejudice on his **part** thus denying a fair and **impartial** hearing and error on **his part** to accept as controlling the proffered **medical statement.** The **Organization** also asserts the **Carrier** failed to substantiate **its** charges by a **preponderance** of evidence.

While the notice to the **Claimant** did fail to cite a rule, we find it **sufficiently** precise to alert him as to the basis of the **investigation.** We find the record unsupportable of the **Carrier's** assertion that it had no advance knowledge of **why** the **grievant** was **contending** he would be absent. While subsequent inquiry of the **Claimant's** supervisor at the hearing adduced testimony to the **contrary,** we cannot ignore the **exchange between** the **hearing officer** and the **Claimant's** supervisor:

Question (by the hearing officer)

"On Friday, October 20, 1978, did  
(the Claimant) secure permission  
to be off of work?"

Answer (by the Claimant's supervisor  
who received the call)

"No, but he called in, you know, stating  
that he was ill, I guess, which isn't a  
question, you know, that he did call in  
or not. It is just that he is absent  
so much, you know."

As regards the Organization's claim that the hearing officer accepted a recapitulation of the Claimant's absence and sickness record, doing so in error and more so in that such receipt was prior to the hearing, it is noted that the document was submitted to K. H. Smith, Chief of Motive Power and Purchasing Agent and presumably in a line of authority over the Claimant; Smith was also hearing officer on this case. While such dual roles are often cited as bases for asserted impropriety in such cases as this, this Board has not seen fit to affirm such claims on that fact alone. However, we would concur that it would be inappropriate for consideration of the Claimant's overall absence and sick leave record, given that the pending charge was limited to absences in the Stores Department.

Thus, we assess the validity of the Carrier's actions on the basis of the Claimant's absences in that Department. Of the four absences cited, all were on Fridays, in conjunction with the Claimant's regularly scheduled days off (Saturday and Sunday). In contrast to the Carrier's claim, such absences were not consecutive Fridays, but did represent the fourth of eight Fridays he would have normally worked. We find merit to the hearing officer's refusal to accept the proffered excuse as proof that the Claimant was absent October 20, 1978 due to the necessity for dental work; It was incumbent upon the Claimant to ensure that the excuse was sufficiently precise to establish his presence at the dentist's office on that date; it did not.

We note that, while the Carrier asserts that "discussions" had been held with the Claimant concerning his absences, it produced no indication that such advice had been reduced to writing in the form of a disciplinary warning. It is a well-established principle that discipline should be corrective and progressive in nature. Here the Carrier determined to go from informal discussions to disciplinary time off. While we concur that the Carrier had reason to suspect the validity of the Claimant's repetitious absences from the job on Fridays, we conclude that it was better advised to have alerted the Claimant of such concern and formally warn him of the pendency of more severe discipline if such action persisted.

While we shall leave standing the Carrier's disciplinary action in principal, we shall direct that It be reduced by one day and that the Claimant be made whole of a day's pay at the appropriate rate.

**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 discipline was excessive.

A W A R D

Claim sustained as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.