

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23301

Docket Number CL-23192

George S. Roukis, Referee

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

**STATEMENT OF CLAIM:** Claim of the System **Committee** of the Brotherhood (GL-8930)  
that:

1. Carrier violated the effective Clerks' **Agreement** when, following an investigation on **October** 18, 1978, it assessed discipline in the form of a reprimand against the record of Mr. Raymond **Alcaraz**;

2. Carrier shall now remove the reprimand from Claimant's record and shall clear his record of the **charge** placed against him and shall pay Claimant three (3) hours' pay at the pro rata rate of his position for attending the investigation.

**OPINION OF BOARD:** An investigation was held on October 18, 1978 to determine whether Claimant was excessively absent from his duties during the month of September, 1978. Specifically, Carrier asserted that he failed to perform his assigned duties on September 5, 6, 7, **15**, 23 and 30. Based on the investigative trial record, Carrier concluded that he was excessively absent and issued a letter of reprimand, dated October 20, 1978. This disposition was appealed.

In our review of this case, we recognize Carrier's well intentioned efforts to improve Claimant's attendance record and most certainly, view a letter of reprimand as a basic first step in the disciplinary corrective process. Moreover, we do not find that the assertion of a Rule **H** violation at the investigation was procedurally improper. The notice of investigation was sufficiently clear to permit **Claimant** an opportunity to prepare an intelligent **and** coherent defense and the nature of the charges fell within the definition of this rule. Its interpolation at the **hearing** did not affect his ability to refute the charges.

On the other hand, we concur with Claimant's contention that Carrier's reference to its February 23 and April **12**, 1978 admonitory notices were improperly cited since they were not mentioned in the October 6, **1978** investigative notice or importantly noted and discussed at the October 18, 1978 hearing. Their identification and purported relevance in Carrier's March 13, 1979 letter and **ex parte**

submission occurred after the **investigation and** as such, prejudiced Claimant's right to contest them. The investigation was the forum within which to establish an unmistakable cause-effect relationship between these earlier letters and his implicit obligation to justify future absences.

Admitted&y, **without** according the April **12**, 1978 **communication** any judicial weight for the reasons aforementioned, we believe the Claimant was on notice **to improve** his attendance record, but the trial transcript does not contain any data relative to the February 23 and April **12** prior warnings. If these letters were brought out and developed at the hearing, a **foundation** would have been established indicating that **Claimant** was de **facto responsible** for adducing timely verification when he was absent. The parties' Agreement does not require a physician's certificate, **except** when an **employee** is hospitalized, involved in an automobile accident or **claiming** benefits **under** the sick leave rule. None of these contingencies are present here, although **Claimant** did submit a doctor's note verifying his **absences** on the September, 1978 dates. If **the** February 23 **and** April **12** letters were properly introduced consistent with our procedural rules, we could **conclude** by interpretation that he was required to submit a physician's note, concomitant to the **time** of his absences. From the record, as it presently **stands**, we cannot infer this requirement and as such, we are constrained by this finding to **sustain** **Claimant's** petition.

**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;

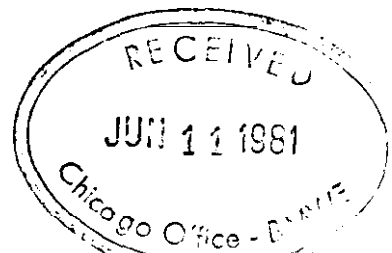
That the Carrier and the **Employees** involved **in** this dispute are respectively Carrier and **Employees** within the meaning of the Railway **Labor** Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.



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

ATTEST:

*A.W. Paul*  
Executive Secretary

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