

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

**Award Number 23302
Docket Number CL-23194**

George S. Roukis, 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-8952) 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. Lorenzo 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: In a companion case, Third Division Award 23301, involving the same Organization and the same Carrier, we held that a letter of reprimand issued for alleged excessive absenteeism was unjustified, since the notice of investigation delineating the charges and scheduling the investigative hearing and the transcribed investigative record, did not contain explicit reference to prior admonitory notices. The cause-effect relationship needed to demonstrate an implicit obligation to cover and justify future absences, was not developed at the hearing.

In the case before us, we have a similar factual configuration. Carrier did not mention or cite any specific prior warnings at the October 18, 1978 investigation such as its April 23, 1978 letter from the Supervisor Car Operation until March 13, 1979 and then again when it prepared its ex parte submission for this Division. In both cases, the reference to prior warnings were noted after the investigation, contrary to the letter and spirit of Agreement Rule 26 which pointedly states that an employee will not be disciplined without investigation and hearing. By definition, this would require that all the pertinent facts, proofs and arguments be adduced at the investigative trial to establish evidence of wrongdoing. It would be unethical to this process if we permitted new data to enter the record subsequent to the investigation in the absence of the parties mutual acquiescence. Such is not the case here. Carrier introduced these prior warnings after the October 18, 1978 investigation and its belated efforts prejudiced Claimant's defense. The time to introduce these letters was at the investigation, not after it was completed. Upon the record and for the foregoing reasons, we are constrained 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. Paulson
Executive Secretary

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

