

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Award Number 23341  
Docket Number CL-23302**

**Josef P. Sirefman, Referee**

**PARTIES TO DISPUTE:** { **Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees  
Chicago and North Western Transportation Company**

**STATEMENT OF CLAIM:** **Claim of the System Committee of the Brotherhood  
(GL-9009) that:**

(1) Carrier violated the agreement rules, particularly Rule 21, when under date of October 30, 1978 it issued notice wherein Mr. Robert Titwell, General Clerk at Provviso Yard, was dismissed from service account investigation held on October 24, 1978; and

(2) Carrier shall now be required to reinstate Mr. Robert Titwell with all rights unimpaired, and make him whole for all losses incurred from October 31, 1978, forward, until the violation is corrected, to include losses in connection with fringe benefits withheld.

**OPINION OF BOARD:** The Claimant, Robert Titwell, was hired by the Carrier on November 5, 1973 as a General Clerk. On October 18, 1978 he was assigned to Position 798 commencing at 8 AM. The record establishes that Titwell, apparently on the way to work, called the Chief Clerk at 7:10 AM to say that he had a toothache and wouldn't be in that day. His version is that she responded "Okay", and then the connection was broken. Claimant then went to a drugstore for some pain killer, was given a codeine formulation by the druggist and went home because this medicine made him drowsy. The Chief Clerk's version was that when Claimant called, she asked him to hold on, that she had to consult the Assistant Agent, she put him on hold and checked, but when she returned to the phone the line was dead. As Claimant was calling from a bus stop the Clerk did not try to call him back, nor did she try to contact him at home. Instead she notified the foreman on the job and left it up to him.

**On October 19, 1978 Claimant was charged as follows:**

**"Your responsibility in connection with your failure to protect your assignment.**

**"Specifically, your failure to report for duty while assigned Position 798, General Clerk, commencing 8:00 AM on October 18, 1978."**

Carrier's Superintendent-Division Manager issued a notice to Claimant that he was dismissed from service at the end of his assignment on October 31, 1978.

The Organization contends that Claimant, unable to work, properly called in to so advise the Carrier, that he produced a dentist's note to support his illness, and that there was no willful failure to report to work. In effect the Claimant's past record for absenteeism is being used to support a finding that he was improperly absent from his job. The Carrier contends that Claimant had no permission to lay off, that his documentation was insufficient, and his long history of absenteeism and tardiness has been handled through progressive discipline.

It is axiomatic that prior infractions cannot be used to establish the fact of a current charge. However, the prior record of discipline does play a role in this instance, to establish the standard by which to measure the steps required of Claimant by the Carrier when he claimed an illness which precluded his reporting for work. Claimant, by his own testimony (p.9 of the transcript) was aware that he was required to bring a doctor's certificate to support his absence, i.e., that mere notification of illness was insufficient. Yet he did not bring in a dentist's note until after he was given a chance to do so after the end of the hearing, strongly suggesting that the prior instructions made no impact on him. Claimant knew that it was not enough to simply call in yet made no attempt to call back the Chief Clerk when the line was disconnected even though he was at a number unknown to that Clerk. Thus there is sufficient evidence in the record to support a finding that Claimant did not follow the steps required of him when he reported in ill.

Termination is not unduly harsh in this instance where Claimant's prior record included seven Letters of Reprimand and five suspensions, some of substantial duration, many dealing with excessive absenteeism. It is reasonable and justifiable.

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

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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. Paulsen*

Executive Secretary

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