

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23868
Docket Number CL-23857

Ida Klaus, Referee

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

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-9325)
that:

(1) Carrier did violate the Agreement between the Parties when, on April 5, 1977, it arbitrarily brought to trial Extra Board Clerk Oliver J. Cherry for missing a call to work on March 28, 1977, erroneously imposing discipline of "reprimand" which is noted on his service record, and

(2) Because of such impropriety, Carrier shall be required to remove the notation from the service record of Mr. Oliver J. Cherry.

OPINION OF BOARD: The Claimant protests as arbitrary the placement on his service record of a reprimand for having missed a call to work as an Extra Service Clerk.

The facts elicited in the investigation are simple, and the testimony is not conflicting.

The Carrier's sole witness, a Clerk-Caller, gave brief testimony that: He called the Claimant's home at about 3:40 A.M. for an assignment to start at 5:00 A.M. When the Claimant's wife answered, he asked for the Claimant. Whereupon she left the phone and returned, saying that her husband had taken medicine and she could not wake him.

X- It was the Claimant's undisputed testimony that he was ill at home when the call was received and that he did not learn about it until later in the day when checking with his wife.

X- As the Carrier did not challenge the Claimant's statements, it must be found that the Claimant did not miss the call and that he had a valid reason for not responding for service. The weight of the undisputed evidence does not sustain the Carrier's contention that the Claimant's failure to come to the telephone implies that he was not at home.

As the charge is not supported by the record, the Board concludes that the determination of the Carrier was not justified and that the discipline assessed was not warranted. The claim will be sustained in accordance with Rule 47 (a-6) of the Parties' Agreement, and the reprimand notation is to be removed from the Claimant's service record.

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

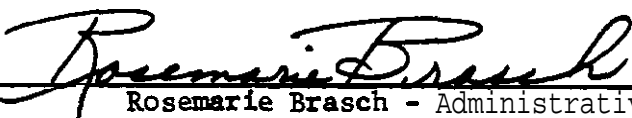
That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

BY 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 13th day of May, 1982.

