

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **23969**
Docket Number CL-23746

Josef **P.** Sirefman, 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-9277)
that:

(1) Carrier violated Rules of the effective Clerk-Telegrapher Agreement when, on May 10, 1979, it unjustly dismissed Extra Yard Clerk **Mr.** P. T. Weaver from service of the Carrier, and

(2) As a result of such impropriety, Mr. P. T. Weaver shall be reinstated to Carrier's service in accordance with governing Agreement Rule 47.

OPINION OF BOARD: Claimant P. T. Weaver, an Extra Yard Clerk, was charged with failure to properly protect his assignment on April 4, 1979 on which date he claimed **sickness**. A hearing was held on April 20, 1979 and **Claimant** was **dismissed from service** on May 10, 1979. An **appeal** hearing was held on May 30, 1979 and **the dismissal** was reiterated by the Carrier on June 4, 1979.

A review of the **record** before **this Board** establishes that on April 4, 1979, **although** Claimant was off duty as sick until further **notice since March 30th**, he was seen **by a** supervisor during shift hours delivering a bundle of newspapers from a newspaper route vehicle to a pharmacy in his hometown, was aware that he had been seen, and **immediately** thereafter called in to the Carrier to say that perhaps with another night's sleep he might be able to mark up the next morning. Carrier could reasonably infer from this sequence of events that Claimant was not so sick on April 4th that he could not report for work. Therefore, there was substantial evidence to **sustain** Carrier's decision to discipline Claimant. However, given Claimant's length **of service**, the penalty of termination is too severe. Accordingly, Claimant is to be returned to service but without any back pay and this discipline is to constitute a last chance warning.

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

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That the discipline was excessive.

A W A R D

Claim sustained to the extent indicated in the **Opinion.**

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie **Brasch** - Administrative Assistant

Dated at **Chicago**, Illinois, this **27th day** of August 1982.

