

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24313
Docket Number CL-23919

Gilbert H. Vernon, Referee

PARTIES TO DISPUTE: (Brotherhood of **Railway**, Airline and Steamship Clerks,
{ Freight Handlers, **Express** and Station **Employees**
(Chicago, Milwaukee, St. Paul and Pacific Railroad **Company**

STATEMENT OF CLAM: Claim of the System **Committee** of the Brotherhood,
CL-9353, that:

1. Carrier **violated** the Clerks' Rules Agreement **in** Chicago, Illinois when it charged, held an investigation and assessed discipline of dismissal against **Employee C. L. West**.

2. Carrier shall now **be** required to clear the record of **Employee C. L. West** of the alleged charges and compensate her for all time lost commencing **December 7, 1979** and continuing until she is returned to service.

3. **Carrier** shall further be required to pay interest at the rate of $7\frac{1}{2}$ percent per **annum** compounded annually on the anniversary date of this claim on the amount due in Item 2 above.

OPINION OF BOARD: The **Claimant** at the **time** of discharge was employed **as** a timekeeper which had assigned hours of **8:15 A.M** to **4:45 P.M.** Monday through Friday. On September 27, 1979, a notice of investigation was directed to the Claimant which read in pertinent part as follows:

"Please be advised that charges are hereby preferred against you for being tardy on September 13, 20, 26 and 27, 1979.

Investigation **in** connection with the aforementioned charges being preferred **against you will be** held in Room 740, Union Station Building, 516 W. Jackson Boulevard, Chicago, Illinois, at **10:00 a.m. on Wednesday, October 3, 1979.**"

The **investigation** was postponed and held on November 30, 1979. Subsequent to the investigation the Carrier dismissed the **Claimant**.

There is little doubt that on September 13th the claimant did not report to work until **9:43 A.M.**, on September 20th she did not report until **1:00 P.M.** and on September 27th she did not report until **8:25 A.M.** On all dates except September 27th, the Claimant, upon arrival at work, indicated her tardiness was caused by **sickness**. On September 26th she called at **8:45 A.M.**, stating that she was coming in. At **11:00 A.M.** she called again indicating she **missed** her train.

The Organization argues that the Claimant cannot be held in violation of Company rules against tardiness because the Grievant was detained from work due to sickness which under Rule 25 would preclude disciplinary action. They provide a variety of documents from the various doctors that they believe support the Claimant's assertion that she was ill. Moreover, the Organization suggests that the instn tOffense would not justify dismissal.

It is the Board's conclusion that the Organization has failed to overcome the prima facie nature of the Carrier's case. The Organization defends Ms. West by claiming she was sick and providing documents from doctors. However, upon review of the doctors' statements and records it cannot be concluded that they establish in a convincing way that the Claimant was prevented or detained from reporting on time on the dates in question as a result of her sickness.

Regarding the quantum of discipline, normally discharge would not be upheld for being tardy four different days, but in view of the Claimant's past record, dismissal is not excessive, arbitrary, or capricious. Her past record indicates that she had previously received ten reprimands, a 30-day deferred suspension and a 60-day actual suspension for similar offenses. Her record distinguishes her as either unwilling or unable to fulfill the responsibilities of her employment. In view thereof, the Claim will be denied.

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;

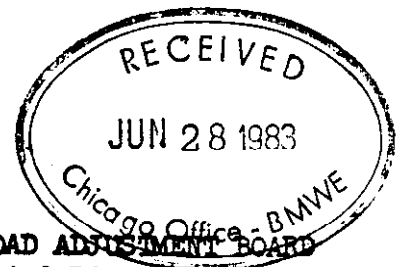
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division



ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of April 1983.