

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24912
Docket Number CL-25064

Paul C. Carter, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9758) that:

(1) Carrier violated the Rules of the effective Clerk-Telegrapher Agreement when, on February 22, 1982 it unjustly dismissed Lead Class Clerk Robert L. Byrd from service of Carrier, and,

(2) As a result of such impropriety, Carrier shall be required to restore Mr. R. L. Byrd to Carrier's service and he shall be paid compensation for all wages lost commencing February 22, 1982, and continuing each subsequent work date, and that Mr. Byrd's service record shall be cleared of the notings incident to the unjustified dismissal.

OPINION OF BOARD: Claimant, prior to the occurrence giving rise to the dispute herein, was employed as Lead Class Clerk, Baltimore, Maryland. On January 14, 1981, he marked off sick.

The Carrier states that after four months and having received no information from Claimant regarding his illness, the Carrier sent a certified letter to Claimant on April 9, 1981, advising him to report for a physical examination. The letter was sent to Claimant's home address, as shown on Carrier's records, but was not claimed and was returned to the sender on April 25, 1981. The Carrier made various other attempts to contact Claimant during the year 1981, but heard nothing further from him. On January 6, 1982, the Carrier wrote him:

"You are charged with responsibility in connection with your prolonged and unauthorized absence, and your failure to respond to my letter of December 8, 1981, within the ten calendar days allotted.

Attend investigation at 9:00 a.m., on Thursday, January 14, 1982, in the office of Assistant Superintendent - Division Administration, Room 204, Camden Station, Baltimore, Maryland.

You are responsible for arranging for a representative and any witnesses you may desire."

The letter of January 6, 1982, was also sent to Claimant's home address. Claimant requested a postponement of the investigation, which was granted by the Carrier in a letter dated January 13, 1982, which was also sent to Claimant's home address. The investigation was finally conducted on January 26, 1982, and on February 22, 1982, Claimant was notified:

"Please refer to investigation held at 9:00 A.M., Tuesday, January 26, 1982, in Room 204, Office of Assistant Superintendent - Division Administration, Camden Station, Baltimore, Maryland.

It has been determined that you are at fault for failing to comply with verbal and written instructions, have not made any attempt to comply with Hearing Officer's request of January 26, 1982 to furnish evidence regarding your prolonged and unexplained absence and alleged illness, nor any evidence to explain your absence from duty as a Clerk from January 13, 1981 to present date.

The discipline assessed is dismissal from the service of Baltimore & Ohio Railroad Company effective immediately.

Please acknowledge receipt of this letter."

In the investigation Claimant contended that one of the certified letters previously sent to him went to his brother's address, who signed for it but did not advise him of it; that he did not sign for another certified letter, even though the Postal receipt had the signature of Robert L. Byrd.

In the investigation on January 26, 1982, the following transpired between the hearing officer and Claimant:

"QUESTIONS BY W. R. McTHENY (hearing officer) TO R. L. BYRD:

Q 39 Mr. Byrd have you been hospitalized during the period of time from January 13, 1981 to date?

A 39 No comment.

Q 40 I asked before if you had medical evidence pertaining to your alleged illness. Do you have such documentation with you today?

A 40 It was not requested in the letter, so no."

STATEMENT BY W. R. McTHENY

"Rule 47 of the Clerical Agreement which is in existence today quotes in part '...The investigation shall be held within 10 days from the date when charged with the offense or held from service. A written decision will be furnished the employee within thirty (30) days after completion thereof.' Today is January 26. The decision will have to be rendered prior to February 25, 1982. I strongly suggest that you have the documentation made available to this hearing officer prior to February 25, 1982. That's a month."

Claimant's representative had no comments concerning the last quoted statement of the hearing officer.

In its submission to the Board the Organization furnished two statements, both dated February 25, 1982, from Claimant's doctor. The Carrier contends such documents were never presented in the handling of the dispute on the property. They could not have been presented to the Hearing Officer prior to February 25, 1982. It is so well settled as to require no citation that new issues and new defenses may not be raised for the first time before the Board.

From the record it is clear that the Carrier made every reasonable effort to determine Claimant's physical condition prior to the charge of January 6, 1982, and the hearing officer went the extra step in the investigation of January 26, 1982, but Claimant simply ignored the requests. In the investigation Claimant's attitude seemed to be one of indifference such as his answer "No comment" to the question as to whether he had been hospitalized during his absence, and his failure to furnish medical evidence in the investigation to support his lengthy absence. Claimant's absentee record prior to his marking off on January 14, 1981, was not good.

The Organization is not on good grounds in complaining that the disciplinary decision was issued on February 22 1982, rather than February 25, 1982. The record contains nothing to indicate Claimant was making any effort to support his absence, or that any medical evidence was furnished prior to February 25, 1982.

There is no proper basis for the Board to interfere with the discipline imposed by the Carrier. See Awards 22880 and 22513 involving the same parties.

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 not violated.

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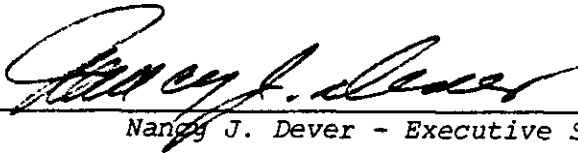
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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 30th day of July 1984.