

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25026  
Docket Number CL-25003

Eckehard Muessig, Referee

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

PARTIES TO DISPUTE: (

(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9765)  
that:

1. **Carrier** violated the Clerks' Rules Agreement when it arbitrarily dismissed Mr. C. H. Landfried from its service, following investigation held May 18, 1982, without giving reasonable consideration to all the facts and mitigating circumstances involved. (Carrier's file-Cl.

2. Carrier's action was unjust, unreasonable, harsh and **an** abuse of discretion.

3. Carrier shall now be required to return Mr. Landfried to its service with all rights unimpaired and compensate him for all wage losses sustained until returned to service; and, shall also be required to expunge the investigation record from his personal record file.

OPINION OF BOARD: This claim involves **an** appeal from the Carrier's decision to dismiss the Claimant for violation of its safety rules. Specifically, he had been dismissed for failure to report an "alleged personal injury". The significant events leading to this dispute began when Carrier received a letter from a law firm **on** May 10, 1982, in which it was essentially stated that the Claimant had been injured on or about November 28, 1979, while in duty status for the Carrier. The essence of the Carrier's finding of guilt is that the Claimant was required by its rules to submit an injury report within a short time after the injury, not some two years later.

In its appeal, the Organization advances its contentions on a number of counts, most importantly: (1) **At** the time that the injury occurred, it **was** of such a nature that the Claimant did not realize that it would become worse. Consequently, it was not until the March 1982 time frame that he finally concluded that what had occurred to him earlier was causing his physical problems. (2) Therefore, this element, in addition to other mitigating circumstances **leading to** this claim, should have been considered. Moreover, because the Claimant did complete an injury report dated January 30, 1980, this could have been the injury that the law firm contended occurred **"on** or about November 28, 1979", in view of the time that had elapsed and the resultant uncertainty as to exactly when the injury occurred. (3) Certain procedural defects relating to the charge itself and the hearing process do not comport with due process requirements.

With respect to the procedural objection, we find that the Claimant **was** provided a fair and reasonable hearing that complied with the essentials of due process.



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Concerning the remaining issues, herein under dispute, certainly the Claimant's explanation of why he did not report his alleged injury is not implausible. On the other hand, Carrier's rules are very explicit with respect to the reporting of injuries. This is so for many well-stated and understandable reasons enunciated by this Division in many prior awards which need not be repeated here. Likewise, the Claimant, by his own admission, was aware of Carrier's requirements and we find its finding of guilt well-supported by the record.

However, although we find substantial evidence to support the Carrier's decision, on weighing the balance of the total record, we consider permanent dismissal, in light of all the circumstances and facts of record, to be excessive. In this respect, the Board takes particular notice and gives weight to the Claimant's clean record concerning rule infractions and his forty years of service.

Having thus found, he shall be restored to service, with seniority rights unimpaired, but without compensation for time lost while out of service.

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 discipline "as excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.