

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 25113
Docket Number CL-24677

Ida Klaus, Referee

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

PARTIES TO DISPUTE: (

(**The** Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9633**) that:

1. Carrier violated the effective Clerks' Agreement when after investigation **and** hearing on June 25, 1981, it arbitrarily and capriciously suspended Clerk **J. Alexander** from service for a period of fifteen (**15**) days without just cause.

2. Carrier shall now be required to compensate Clerk **J. Alexander** for all wage loss suffered as a result of his fifteen (**15**) day suspension from service and his record shall be cleared of the charges.

OPINION OF BOARD: The **Claimant** protests a **15-day** suspension for failure to accept a work assignment **on** June 9, 1981.

The Claimant, an Extra Board Clerk, called the Chief Clerk **at 12:30** p.m. on June 9, 1981, to ask if any job was available for him. Told that there **was none at** the time, the Claimant said he would call again at **1:15** p.m. When he called again and gave his name, the Chief Clerk responded immediately that a job was then available. Whereupon the Claimant said he was ill and marked off sick.

On these facts and the record evidence of the Claimant's prior offenses of unavailability, the Carrier determined that the Claimant had refused the job because he did not choose to work that day, not because he **was** too ill to work. In the Carrier's view, the **Claimant** marked off sick only after learning, contrary to his expectation, **that** a **job** was actually available.

The Claimant responds that he was ill that day and was **advised** by the doctor not to work but he nevertheless felt well enough to work at **12:30**. He became **worse**, however, by **1:15** and called again to report his illness. But, he said, he had no chance to say so before the Chief Clerk offered the job. He presented a doctor's statement **that** he was under medical care for a period of illness covering that day in question.

The Organization protests the suspension primarily on the ground that the Carrier failed to prove the alleged misconduct by substantial evidence. The Organization sees evidence beyond a reasonable doubt to support the Claimant's explanation. It notes particularly that the doctor's certificate and his advice to the Claimant were undisputed. It finds no basis for the Carrier's assumption that the Claimant deliberately waited to learn whether a job was available before deciding to report sick.

The Board fully agrees with the Organization that an **employee** should not be expected to work when he is too ill to work. The Board must conclude, however, that the Carrier has shown by substantial evidence that this Claimant was not too ill to accept the job he was offered. We cannot say that the Carrier was unreasonable or arbitrary in concluding that the Claimant's real reason for marking off sick was that he did not want to work. There is sufficient basis to reject as unconvincing the Claimant's explanation of his relative feelings of actual fitness for work at the times he made the first and second calls. Nor is the medical certificate sufficient to prove how he genuinely felt. We find no basis for the Organization's assertion that the Carrier relied on evidence other than that contained in the record of investigation

We cannot find the **15-day** suspension to be excessive or otherwise unreasonable in view of the Claimant's poor prior availability 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 9th day of November 1984.




LABOR MEMBER'S DISSENT TO
AWARD 25113, DOCKET CL-24677
(REFEREE KLAUS)

The majority opinion in this instance has erred in concluding there was substantial evidence indicating the alleged misconduct. The record does not support their findings that Claimant was not too ill to **accept** the work he was offered. Nor is their failure to accept a doctor's certificate as proof of illness in accordance with the present working rules adequately explained or even rationalized. Assumption has unfortunately supplanted evidence.

Based upon the record at hand, we are unable to find any merit in the Carrier's action in charging Claimant with misconduct when all of the evidence introduced clearly justified his action in requesting to be excused from work due to illness. To require employees to report to work when they are too ill to work is unreasonable. The Carrier reacted in an arbitrary and capricious manner when it charged Claimant and found him guilty of the offense and the majority opinion has now compounded that error.

The decision in this instance is palpably wrong.



William R. Miller, Labor Member

Date November 28, 1984