NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25115
THIRD DIVISION Docket Number MW-25167

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of way Employes
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The ten (10) calendar days of suspension imposed upon Trackman A. J. Lee for absenteeism "on the following days: October 24, November 20, December 3, December 5, 1980, and May 5, 1981" was improper and unwarranted (System Docket 250D).

(2) The claimant's record shall be cleared of the charge leveled against him and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: An investigation was held on June 24, 1981 to determine whether Claimant violated the Absenteeism Agreement between the National Railroad Passenger Corporation and the Brotherhood of Maintenance of Way Employes. Said Agreement was consummated on October 26, 1976. Specifically in this dispute Claimant was charged with being absent on October 24, November 20, December 5, 1980 and May 5, 1981; and based on the investigative record, Claimant was assessed a fifteen (15) day suspension penalty. This disposition was appealed.

In defense of his petition, Claimant asserts that Carrier violated Rule 71/a) of the Collective Bargaining Agreement since the dates cited in the May 13, 1981 Notice of Investigation, with the exception of the May 5, 1981 date, represented absences which occurred several months before the issuance of the investigation notice. He contends that he had just and proper cause for his May 5, 1981 absence since he presented Carrier with a bona fide 'doctor's slip' indicating that he had an off-duty accident that day; and avers that it was a permissible absence. He argues that Carrier failed to comply with the explicit time requirements of Rule 71(a) and as such, was enjoined from initiating disciplinary proceedings. Rule 71(a) is referenced as follows:

> "An employe who is accused of an offense and who is directed to report for a trial therefore, shall within fifteen (15) days of date of alleged offense, be given notice in writing of the exact charge on which he is to be tried and the time and place of the trial.*

Carrier contends that he was impermissibly absent on the charged dates and more pointedly asserts that he altered the date on the "doctor's slip' to read that he could return to work on May 6, 1981. It does not contest the off-duty auto accident which occurred on May 4, 1981 and required diagnostic assessment at the University of Maryland's Emergency Room facilities, but observes that the slip was falsified. It maintains that he changed the date on which he could return to work from Ray 5, 1981 to May 6, 1981 to cover his unauthorized absence, and avers that it cannot accept this obvious impropriety. It notes that he was served a first offense notice on September 16, 1980 for unauthorized absences on August 12 and September 12, 1980, pursuant to the Absenteeism Agreement; and he was appropriately disciplined in this instance when he was found guilty of a second absence offense. Section 2 of the October 26, 1976 Absenteeism Agreement provides:

> • Maintenance of Way Employees who are found guilty of unauthorized absence from work on the second offense shall be subject to discipline of ten (10) working days suspension."

Moreover, Carrier argues that the appeal herein is invalid since Claimant did not handle the petition in the usual manner on the property. It maintains that he did not appeal the instant discipline within the fifteen (15) day period required by Rule 74 and thus, the claim is without standing. In particular, it asserts that notwithstanding the Claimant being apprised by letter, dated July 9, 1981 of the disciplinary imposition, it did not receive his appeal letter, dated July 13, 1981 until July 29, 1981.

In reviewing the procedural objections raised by the parties we find no clear evidence that the cited rules were violated. The May 5, 1981 absence charge was within the fifteen (15) days requirement of Rule 71(a) and the date of Claimant's appeal letter (July 13, 19811 raises a presumption that it was timely mailed.

On the other hand, we agree with Carrier that the May 5, 1981 absence was unauthorized as evidenced by the alteration of the date on the doctor's slip. It was Claimant's responsibility to rebut Carrier's contention when he was apprised of the asserted falsification. Examination of the photocopy included in Carrier's exhibits persuades us that the date was tampered with, and Claimant was obligated to respond to this charge. Since the doctor's slip provided sufficient cause to challenge its authenticity, Claimant, as a matter of necessity, should have asked the doctor who examined him to verify and confirm the proper date. An affirmative defense devolved upon him which was not met.

Accordingly, since this absence was unauthorized and he was previously found to have violated the Absenteeism Agreement on September 16, 1980, the imposition of ten (10) days suspension for the second violation was consistent with Section 2 of the aforesaid agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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.