

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25802
Docket Number CL-25915

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9910)
that:

1. Carrier violated the terms of the current Agreement, particularly Rule 21 when they preferred charges in an untimely manner on Mr. Dennis K. Holt under date of April 16, 1983, conducted an investigation on these charges on April 27, 1983, and after the conclusion of the investigation, dismissed him from the service of the Carrier effective May 3, 1983, and

2. Carrier shall now be required to restore Mr. Holt to service with full seniority and fringe benefits and pay him for all wage losses sustained as provided in paragraph (c) of Rule 21.

OPINION OF BOARD: Claimant was absent from work on September 14, 1982. On October 6, 1982, he submitted an Employee Illness Certification Form, stating that his absence on September 14, 1982, was due to a severe headache. The Form is used for the payment of sick pay under the provisions of the applicable Agreement. Claimant was, by notice dated April 16, 1983, instructed to appear for formal investigation scheduled for April 20, 1983, on the charge:

"Your responsibility in connection with your submission of Employee Illness Certification, Form MCS-One on which eight hours sick time was improperly claimed for September 14, 1982, when you were absent from work not due to illness."

At the request of the Local Chairman of the Organization, the investigation was postponed and rescheduled for April 27, 1983. A copy of the Transcript of the investigation has been made a part of the record.

At the beginning of the investigation the Division Chairman protested that the investigation was not timely under Rule 21 of the applicable Agreement, reading in part:

"The investigation shall be held within seven calendar days of the alleged offense or within seven calendar days of the date information concerning the alleged offense has reached his supervising officer."

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In the investigation the Agent at Kansas City, under whom Claimant worked, testified that Claimant was paid eight hours sick benefits for September 14, 1982. He also testified that on April 11, 1983, he heard a "rumor" from another employee that Claimant had actually been incarcerated on September 14, 1982; that he asked a Special Agent to investigate further; that he received report from the Special Agent on April 13, 1983, and the investigation was scheduled for April 20, 1983, within the seven-day provision of Rule 21, heretofore quoted. The Organization contends vigorously that the charge should have been made immediately when the Agent heard the rumor of Claimant being incarcerated, and if such had been the case then the scheduled date of the investigation, April 20, 1983, would have been beyond the seven-day provision. We cannot agree with the Organization in this respect. A "rumor" cannot properly be considered information as referred to in Rule 21. Further, the Carrier was within its right in making a preliminary investigation of the "rumor" to determine if there was proper basis for a formal charge.

Objection was also made that the Conducting Officer of the investigation was also the one who actually issued the charge. We find nothing wrong with such procedure, which had been held in awards of this Board too numerous to require citation. Further objection is made that the Conducting Officer did not render the decision. We have been referred to no rule in the Agreement providing who shall prefer charges, conduct investigations or render decisions. See Award No. 24546 and others cited therein.

We find that the investigation was timely held, and that there is no proper basis for the other objections of the Organization. We note that the witnesses were sequestered at the request of the Division Chairman.

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In the investigation there was substantial evidence, including Claimant's statement, that Claimant did fill out an Employee Illness Certification Form, claiming illness compensation for September 14, 1982, and that in fact he was incarcerated on that date. We will not discuss the cause of the incarceration. The fact remains that Claimant was guilty of falsely claiming compensation, which justified his dismissal. See Awards Nos. 24295, 18562.

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In the appeal on the property and in submission to the Board, the Organization has progressed the claim at least to an extent, on information furnished by Claimant subsequent to the investigation. It is well settled in discipline cases that the parties to the dispute and the Board itself are restricted to what is developed in the investigation, and neither party is free to supplement that record subsequent to the investigation. (Awards 22812, 24356, 25190.)

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There is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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 12th day of December 1985.