

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25941  
Docket Number CL-25810

Marty E. Zusman, Referee

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

PARTIES TO DISPUTE: (

(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-9912) that:

1. The Carrier violated the Clerks' Rules Agreement at Milwaukee, Wisconsin, when it charged, held investigation and assessed discipline of sixty (60) days actual suspension to Employee J. R. Meyer on June 14, 1983.

2. Carrier shall now be required to clear Employee J. R. Meyer's record of all mention of charges, investigation and subsequent discipline and compensate him for all time lost caused by such discipline."

OPINION OF BOARD: Claimant was notified by letter dated June 1, 1983, to attend a formal Investigation on Carrier's allegations that he had falsely claimed payment for sickness on the dates of April 15 and March 18, 1983. The Investigation was held as scheduled and thereafter Claimant was notified he had been found guilty as charged and assessed a sixty (60) calendar day suspension (June 14 thru August 12, 1983).

This Board has carefully reviewed the charges and the on-property development of the circumstances that led to the formal investigation of those charges. Claimant filed Claims for two sick days due to alleged illness. Carrier requested Claimant provide a doctor's certificate under the Rules of the Schedule Agreement and failing to receive said certificate, refused sick pay. The Claimant requested an Unjust Treatment Hearing which was denied and he then filed a second set of Claims for the same dates of illness. The Carrier finding a second set of Claims which was submitted directly to payroll while the first set of Claims was being handled on appeal, charged the Claimant with falsely claiming payment, a most serious charge.

The weight of the evidence for any claim is the responsibility of the moving party. A complete review of the record does not substantiate Carrier's charges. Transcript Exhibits A1, A2, B1 and B2 clearly document "claiming sick day account being denied unreasonable treatment investigation." There is a lack of proof that Claimant attempted to defraud Carrier by his action. Rather, Claimant filed a frivolous claim in that he was not claiming sick pay due to an illness, but due to being denied an Unjust Treatment Hearing. Carrier simply should have denied his claim which was not supported by the Agreement. Instead, Carrier overreacted to Claimant's submission of a second set of claims which, on his part, was an improper manner in which to demonstrate his displeasure with the declination of the original claims and his request for an Unjust Treatment Hearing. In any event, the charges brought against the Claimant were not substantiated by the weight of the evidence.

This Board holds that Claimant's record be cleared of all reference to these charges, investigation and discipline. Claimant shall be made whole and compensated for all actual workdays lost for the sixty (60) days on which he was suspended.

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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: \_\_\_\_\_

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1986.

