

NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 25954

THIRD DIVISION

Docket Number MS-26071

John W. Gaines, Referee

(Tommie LeFlore
PARTIES TO DISPUTE: (
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM:

"(1) Whether the Carrier involved herein did violate Rule 27 and others of the Clerk's General Agreement when on June 10, 1980, they dismissed Petitioner from service on alleged falsification of a medical certificate?

(2) Whether the Carrier herein failed to conduct a fair and impartial investigation and hearing in this matter in accordance with the requirements of Rule 27 of the Clerk's General Agreement and if so in each instance, what shall be the remedy?"

OPINION OF BOARD: Hearing before the Third Division with Referee present was convened on January 23, 1986, at the appointed time of 1:00 P.M., and recessed at 1:05 P.M. because of the absence of Claimant. Upon Claimant's arrival, the Hearing was re-opened at 1:17 P.M. and proceeded to conclusion.

Claimant attended an Investigation held by Carrier on June 3, 1980, on the charge as brought, and was dismissed from service by notice dated June 10, 1980.

The charge against Claimant was:

". . . submitting falsified doctors' certificate, dated April 21, 1980, in order to collect sick time payment for April 16, 17 and 18, 1980."

The transcript of the June 3 Investigative Hearing covers 47 pages. In addition to the active participation by Claimant and his representatives, there were three witnesses who testified.

It was within the province of the two Carrier witnesses who did so to submit the Doctor's Written Statement; also to testify that they were witness to the Doctor preparing his Written Statement to the effect that no services had been performed on Claimant at the times in question, and that there were only past services completed much earlier. Despite the exception taken by Claimant's Counsel, such Statement is admissible evidence in the investigative proceeding. (Third Division Awards 15981 and 16308, and Second Division Award 9211.)

Counsel points out that a Carrier Official filed the charge against Claimant, and later served as one of Carrier's Officials involved in the decision imposing discipline. But a long line of decisions by all Divisions of this Board point to no particular jeopardy or unfairness being necessarily involved. See Third Division Award 20077 (same two parties, BRAC and C&O) for a similar result as here, where the Official in like fashion had not become personally involved, for example, by giving testimony. Proof of the charge as filed, and the Officials' decision to impose discipline find basis in the extensive supporting evidence in the record.

A Claim for sick time pay founded on a falsified Doctor's Certificate is accepted as a dismissal offense because of seriousness of the dishonesty. (Third Division Awards 22739, 23114 and 24590.)

The Carrier is afforded latitude in imposing the penalty for a proven offense. We do not find dismissal to be inappropriate here.

The Hearing was requested by Claimant. He was present, and ably represented by Counsel.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

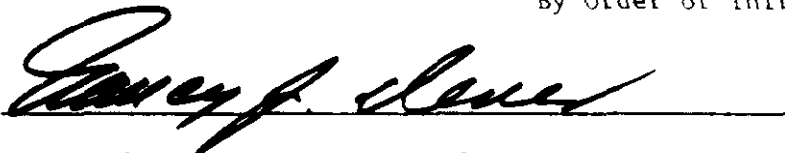
That the Agreement was not violated.

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 14th day of March 1986.