

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30488
Docket No. CL-30760
94-3-92-3-751

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern Railway Company

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

1. Carrier violated the effective agreement, when, following an investigation held on June 25, 1991, it imposed discipline on Mr. C. J. Payne in the form of five (5) demerits against his record without just cause;
2. Carrier shall now rescind the discipline imposed and shall clear Claimant's record of the charges placed against him."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Both Parties have raised timeliness objections with respect to the processing of the instant claim. In each case the transgression, if any, is de minimis, and, therefore, the Board will proceed to the merits of the matter.

At the time this Claim arose, Claimant was holding Clerical position ROUST 31. He was absent from his position on May 2, 4, 23, and 24, 1991. By letter of May 30, 1991, his Supervisor notified Claimant that he was directed to provide "satisfactory evidence as to [his] alleged illness on those dates." Claimant responded to his Supervisor's request on June 7, 1991, in a letter which read, in pertinent part, as follows:

"On May 2, 1991, I was feeling under the weather from some sort of virus, so I called off sick for that night. I didn't go to the doctor because I didn't think it was that bad. I took some over the counter medicine (Coricidin "D") as directed from the label and went to bed. On May 3, 1991, I still wasn't feeling any better, but I decided to go to work anyway. All night long I felt nauseated & (sic) overheated. So as for May 4, 1991, I stayed home and nursed myself with the same medicine as before & drank liquids.

As for May 23rd & 24th, I called off sick because of diarrhea and an inflammation from cleaning my behind so much. Again, I did not go to the doctor, but used over the counter medicine (Imordium (sic) A-D for diarrhea and Desitin for the inflammation and rawness."

On June 12, 1991, Claimant was notified to report for an Investigation concerning his "excessive" absences on the dates in question. An Investigation was held on June 21, 1991, following which Claimant was notified that he had been found "responsible as charged" and assessed five demerits against his record.

The essence of the Organization's position is that Carrier entrapped Claimant by tacitly accepting, as adequate, his statement of the reasons for his absences and then charged him without warning that the reasons stated were inadequate. Moreover, it maintains that the record does not show that Claimant was guilty of the charges placed against him. Accordingly, there is no basis for discipline.

It is clear from the sequence of events leading up to Claimant's discipline that he had adequate warning that his absences on the four days in question were being scrutinized. He was afforded an opportunity to provide a "satisfactory explanation" for his failure to report to work on those days. The fact that Carrier found those excuses inadequate and subsequently charged Claimant with "excessive absence" does not constitute entrapment.

In Award 13 of Public Law Board No. 3497 involving these two Parties the Board found the Carrier's determination that Claimant "had failed to justify her absence...not to be unreasonable." In the instant situation the Board does not intend to substitute its judgment for Carrier's. Having found the Claimant guilty as charged, and in light of Claimant's past record of absences, Carrier's assessment of five demerits was neither excessive nor unreasonable.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 13th day of September 1994.