

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 37283
Docket No. CL-37011
04-3-01-3-678

The Third Division consisted of the regular members and in addition Referee Joshua M. Javits when award was rendered.

(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-12786) that:

1. The Carrier violated the rules of the parties' Agreement made effective December 1, 1949 and amendments thereto, particularly rules 13, 36, 46, 48, among other applicable rules and agreements, when on Wednesday, March 14, 2001 it held a faulty investigation conducted in an unfair and partial manner, which resulted in an unjust decision of ten (10) days suspension from service commencing Thursday, April 5, 2001 through Saturday, April 14, 2001, inclusive, against J. P. Fitzer and his employment record, whose only wrongdoing was that he was absent from work January 8, 9, 10, 17, 20, 21, 22, 27, 28 and 30, 2000 on account of a chronic back ailment following a heart attack in late 1999.
2. The Carrier shall be required to compensate Claimant Fitzer *eight hours each day at straight time rate for all days he was held in suspension status without pay, April 5, 2001 to April 14, 2001* and in addition thereto be paid for all overtime he would have worked had he not been suspended, plus all benefits he may have lost and expenses incurred during such period. That Claimant Fitzer's employment record shall be cleared of all notations placed thereon resulting from the unfair and partial investigation which brought forth the absurd decision of guilt,

during which investigation Claimant Fitzer was deprived of the right to face and interrogate his accuser.

3. The Carrier shall be required to cancel the Clerical Absenteeism Procedural Statement account of its absurd interpretations and application of its provisions to reprimand, suspend or dismiss employees who have had the misfortune of being off of work more than normally expected in a 6 month period due to illness, injury and/or medication problems, etc., regardless if the absences were legitimate and approved, and paid under the sick leave rule.
4. The Carrier knowingly violated the provisions of Rule 36 of the current Agreement when it held a faulty investigation and applied unwarranted discipline in this case beyond thirty (30) days from the date the irregularity was known by the proper officer.
5. This dispute has been presented and progressed in accordance with the provisions of Rule 13 of the Agreement and should be sustained."

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 were given due notice of hearing thereon.

On October 18, 2000 the Claimant was directed to attend a Hearing on November 21, 2000 to investigate a charge of alleged excessive absenteeism during

the period from January 1 through June 30, 2000. Because he had been absent on ten occasions, the Carrier concluded that the Claimant had violated the Clerical Employee Absenteeism Policy by exceeding the authorized absence limit applicable to that period.

The record reveals that the Claimant was absent on January 8, 9, 10, 17, 20, 21, 22, 27, 28 and 30, 2000.

The Investigation was subsequently postponed until March 14, 2001.

Following the Investigation, the Claimant was suspended from employment for a period of ten days. However, the Organization contends that the disciplinary action taken was flawed because it was not undertaken within the prescribed time limits set forth in Rule 36 of the parties' Agreement.

Rule 36 (h) of the Agreement provides that "when employees are subject to discipline, the same shall be made effective within thirty (30) days from the date the irregularity was known by proper official."

Because the alleged offense occurred between January 1 and June 30, 2000, the Organization maintains that the Carrier was required to provide notice of the proposed disciplinary action within 30 days following this period. As noted above, the Carrier did not inform the Claimant of the proposed disciplinary Investigation until October 18, 2000. Furthermore, the disciplinary action against the Claimant was not imposed until March 14, 2001.

Based on the above, it is clear to the Board that the Carrier failed to comply with the time limits outlined in the parties' Agreement. As a result, the Board concludes that the disciplinary action taken by the Carrier should be set aside because of its untimeliness.

The Claimant is to be made whole for all losses of pay sustained during the period of suspension. Additionally, the notice of suspension should be removed from the Claimant's employment record. All other requests for benefits asserted by the Claimant are denied.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 17th day of November 2004.