

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that the Carrier violated the Clerks' Agreement at Muskogee, Oklahoma, beginning December 16, 1955, when,

(a) It withheld and subsequently dismissed Mr. H. A. Pittman from the Carrier's service, and,

(b) That Yard Clerk H. A. Pittman shall be restored to service with all rights unimpaired and compensated for all time lost from December 16, 1955, at the rate of the position he occupied at the time of his dismissal, or any position which might have become vacant or established after that date to which his seniority would have entitled him had he not been removed from service, and that such compensation shall continue until Claimant Pittman is restored to service.

OPINION OF BOARD: This is a discipline case.

As has been noted from a reading of the claim, claimant seeks restoration to service and pay for all time lost on account of alleged wrongful dismissal.

At the hearing on the charges the evidence was undisputed that claimant was off duty 18 times for a total of twenty-five working days in four and one-half months.

He was the lone witness at the hearing and his only excuse was that he had been "sick" on all of the days he had been absent, yet during all this time he never consulted a doctor except one time when he was requested to see the Company doctor, who stated

"Except for an acute cold not severe, I was unable to find anything the matter with this man. * * * His chief complaint was that 'he felt bad.'"

In Award 7020 we said:

"The response given to the instruction—'I don't feel like it'—without further explanation, and Claimant gave none, was am-

biguous. Out of context, it might mean that the man was too ill to work any longer; or it might mean that he simply preferred to do something else."

In our case it is quite apparent from the record that Claimant did prefer to do something else.

The only award relied upon by the Organization that comes close to the situation involved before us is Award 4907 which recites in part:

"The only evidence produced at the hearing was the claimant's statement that he had been sick and his testimony that he had been sick. The Carrier offered no testimony to refute, contradict or challenge the statement of claimant. The evidence offered does not sustain the offense charged or the offense of which the claimant was found guilty." (Absent from duty without permission) The claim was sustained. (Parenthesis supplied)

While the police records involving claimant were not introduced at the hearing, in the instant case—they are in the record before us, and properly so, because after all they are public records, and since the Organization frequently resorts to records of court proceedings to prove innocence, Carrier is not precluded from using similar records to indicate that the employee's conduct, even though off the premises, interferes with his work.

The Carrier was justified in at least considering in this case that two serious operational errors may have been due to his conduct during his absences.

Our conclusion is that the Carrier did not violate the agreement and the claim should be denied.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 28th day of March, 1958.