

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19808  
Docket Number GL-20064

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: ( Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employes  
(  
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7236) that:

1. The Carrier violated the Clerk's Agreement, when it dismissed Janitor White from service on December 23, 1971.
2. Claim that the Carrier's action was arbitrary and an abuse of discretion.
3. Claim that Janitor White be restored to service with seniority rights unimpaired and compensated for all wage losses sustained, effective April 25, 1972.

OPINION OF BOARD: Following hearing the claimant was dismissed, effective December 23, 1971, for (1) engaging in outside employment while marked off for "personal business" and (2) failure to furnish medical evidence respecting absence from work while marked off for sickness. The Petitioner asserts that claimant is illiterate and that such constitutes a sufficient mitigating fact to render the dismissal unjustified.

Claimant held a regular relief assignment as janitor when this dispute arose. He marked off because of "personal business" from November 5 to 13, 1971, and because of sickness from November 13 to December 16, 1971. On this last date Carrier learned that claimant had worked as a longshoreman on November 11, 12, and 13, 1971.

There was no problem about claimant being off on November 5 and 6 because of personal business; however, on November 7, at 1:30 a.m., he phoned in to mark off for personal business "until further notice". Between November 7 and 13, Mr. H. C. Mills, Supervisor Car Operation, called claimant's phone several times and left call-back messages. On November 13 Claimant phoned Mr. Mills and was told by Mr. Mills that indefinite leave for personal business was not permitted. Claimant then said he was sick, whereupon Mr. Mills told him to provide medical evidence of sickness upon return to work. Claimant did not return to work promptly, so Mr. Mills phoned him and left further call-back messages on November 29 and 30. On December 3, 1971, Mr. Mills wrote claimant that, if medical evidence of sickness was not provided by December 12, his company file would be closed. Claimant did phone Mr. Mills on December 15, 1971 to say he was still sick and, due to a change of address, had just received the December 3 letter.

At the hearing claimant submitted a medical statement showing that he had been under a doctor's care since November 12, 1971. He also stated that he could not read. However, he said he had completed the seventh grade in school and had stated in a prior hearing that he had read the bulletin books and bulletins as posted.

In appraising these facts it becomes quite clear that, while marked-off for personal business, claimant did not protect his regular assignment with Carrier on November 11, 12, and 13. Yet, on these same days, i.e., November 11 and 12, and a part of November 13, claimant performed longshoreman work for another company. Thus, there is no doubt that claimant violated Carrier's rule against outside employment. On the sickness part of the dispute, the claimant's medical evidence showed he was under a doctor's care on November 12. However, other evidence conclusively showed that claimant had worked as a longshoreman on November 12; this raised a question about the general integrity of the medical evidence, and Carrier apparently treated the medical evidence as having no probative value. We do not disagree. On the illiteracy issue, the Petitioner's submission contains strong evidence that claimant was in fact illiterate. However, this evidence was not submitted until after the conclusion of the investigative hearing and, consequently, cannot be considered in our review of the Carrier's action thereon. Awards No. 15574 (Ives), First Division Award 16411 (Daugherty) and Second Division Award 2293 (Wenke). Carrier determined on the basis of the hearing record that claimant was not illiterate to the degree asserted by Petitioner and we find nothing in the record to suggest that this determination was unreasonable or arbitrary.

On the record as a whole there is substantial evidence to support Carrier's action and we shall deny the claim.

**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 Employee involved in this dispute are respectively Carrier and Employee 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

Award Number 19808  
Docket Number CL-20064

Page 3

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E. H. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1973.