

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22176
Docket Number CL-21823

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(Consolidated Rail Corporation
((Former Penn Central Transportation Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8209) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of dismissal, later reduced to the 90 days held out of service, on B. D. Nardis II, Clerk, Enola, Pennsylvania.

(b) Claimant Nardis' record be cleared of the charges brought against him on July 24, 1975.

(c) Claimant Nardis be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: B. D. Nardis, II, was dismissed by the Carrier.
This discipline was later reduced to holding the Claimant out of service for ninety days.

The Claimant requests that this Board clear his record of the charges brought against him in this case and that he be compensated for the wages lost during the ninety days he was held out of service.

The Carrier charged the Claimant with three specific alleged violations:

1. Using sickness as a subterfuge for being absent from duty from March 6, 1972, until May 29, 1975.
2. Falsely claiming compensation for sickness for March 6, 7, 8, 11 and 12, 1972, under the provisions of 4-I-1 of the BRAC Schedule Agreement while attending Shippensburg State College.

3. Performing volunteer work on Ski Patrol at Ski Roundtop, Dillsburg, while being absent from duty allegedly from sickness.

The Organization first alleges a procedural deficiency in regard to the notification for the disciplinary hearing. It is held that the Company complied with the Agreement in regard to the notification for the investigation. The argument advanced by the Organization on this point is without merit.

The Carrier first alleges that the Claimant utilized sickness as a subterfuge for being absent from duty from March 6, 1972, until May 29, 1975. The Carrier asserts that the real purpose for the absences was to permit the Claimant to attend college, and therefore he should have sought a leave of absence pursuant to the applicable rules. We have reviewed the Transcript of the discipline hearing and conclude that it contains many inferences and that the presentation to the Board makes additional inferences predicated upon the initial testimony. We distinguish this type of reasoning from conclusions predicated upon a series of facts. We do not believe that the inferences established in the record rise to the level of circumstantial evidence sufficient to sustain the charge made by the Carrier.

In regard to the second charge that he falsely claimed compensation on certain designated days, the evidence consists chiefly of a Carrier employe testifying that he checked the records to determine the date that registration for college occurred and the date that classes actually began. There is no direct evidence in this record that the Claimant attended Shippensburg State College on the specific dates alleged in the second allegation; nor is there sufficient circumstantial evidence introduced to find that the Claimant was not entitled to claim compensation for sickness on the specified dates.

In regard to the third allegation, it is held that even if true, this allegation standing alone would not form a basis for discipline. It is but an incident of evidence to be considered in the total presentation.

Therefore, it is the opinion of the Board that the Carrier has failed to sustain sufficient allegations to warrant the assessment of discipline in this case. Therefore, the claim is sustained.

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 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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1978.

