

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22365
Docket Number CL-22017

Dana E. Eischen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8366) that:

1. The Carrier violated the effective Clerks' Agreement when under date of March 4, 1976, it suspended Clerk Lucille Bradley from its service for a period of seven (7) days commencing on March 13, 1976, based upon charges which were not proven.

2. The Carrier shall now compensate Ms. Bradley for all time lost as a result of this suspension from service and clear her record of the charges placed against her.

OPINION OF BOARD: In this case Claimant appeals the imposition of a seven-day suspension following a hearing in which Carrier found her guilty of the following charge:

" . . . absenting yourself from your assigned duties from about 9:45 AM to about 11:15 AM on Tuesday, February 10, 1976 during which period you were laying down in the women's lounge in the basement of the Agent's Office in Joliet, Illinois."

The thrust of the charges against Claimant is that she was lying down for one and one-half hours in the ladies' lounge during a time when she was supposed to be at work cleaning that lounge. If Carrier had proven that to be true then we would have no occasion to disturb the suspension, especially in light of Claimant's poor discipline and performance record. The sole evidence to support the charge, however, is the testimony of two Carrier witnesses, one of whom said she saw Claimant in repose at 9:45 a.m. and another who saw her resting on the sofa at 11:00 a.m. on February 10, 1976.

The latter employe, Miss Marvic, informed her Supervisor and the Agent and together they went to the ladies' room at about 11:15 a.m. where they found Claimant awake and sitting on the sofa. The Agent and the Supervisor inquired if Claimant was ill and she responded that she had felt faint and had lain down because she felt that she might pass out while she was doing her work. She declined an offer by the Supervisor to see a physician or to go home but said she now felt that she could continue her duties.

Part of Claimant's duties include cleaning the ladies' lounge in which she is accused of sleeping. She testified without contradiction that on the morning in question she cleaned the sinks and toilets, waxed the floor and cleaned a closet across the corridor from the lounge. She admitted that she was lying down at the time she was seen by the two Carrier witnesses, but asserts that between those times she was performing her assigned duties. She testified that she felt drowsy or faint as she was working and attributed that condition to ingestion, before coming on duty, of a Valium capsule prescribed by her physician.

Circumstantial evidence can be persuasive and in an appropriate case might be sufficient to carry a burden of proof. It is not sufficient in this case. The only thing proven is that Claimant was in repose at 9:45 a.m. and again at 11:15 a.m. Her testimony is essentially unrefuted that she performed her duties during the time period in question, except for resting when she felt faint. Nor is the bona fides of her illness persuasively brought into question herein. Absent conjecture and speculation, there is not sufficient evidence on this record to support the charges placed against her. She cannot be found guilty on such flimsy evidence, even if her prior discipline record is bad. Guilt of the instant charge cannot be imputed on the basis of a bad reputation or prior misconduct. Prior discipline becomes relevant to the question of the appropriate amount of discipline to be imposed only after Carrier first establishes culpability for the instant offense. Based upon all of the foregoing the claim must be 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 30th day of March 1979.