

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22583
Docket Number CL-22624

Richard R. Kasher, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Detroit & Toledo Shore Line
(Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8659) that:

1. The Carrier violated the effective Clerks' Agreement when following an investigation on October 18, 1977, it suspended Clerk Debi Wisniewski from service for a period of two days, October 24 and 25, 1977, based upon charges which were not proven.

2. The Carrier shall now compensate Ms. Wisniewski for all time lost on October 24 and 25, 1977, as a result of this suspension from service and shall clear her record of the charges placed against her.

OPINION OF BOARD: Claimant, at the time the discipline was assessed, was a clerk assigned to the position of Rate Clerk in the Carrier's yard office, Lang Yard, Toledo, Ohio. Claimant was assigned to work the three p.m. to eleven p.m. shift with Monday through Friday as workdays and Saturday and Sunday as rest days.

Claimant telephoned the Carrier at 12:30 p.m. on October 7, 1977 (approximately two and a half hours prior to the commencement of her scheduled assignment for that date) to advise that she would not fill her assignment that day since she would be "getting out of court" and was marking off and it was possible that she might not be available for her tour of duty.

During the court proceedings, which the Claimant was attending, she became ill and returned home.

When Claimant returned to work on Monday, October 10, 1977 she submitted a payroll claim for sick leave for her assigned workday on October 7, 1977.

The claim for a day's sick leave was paid. Subsequent to the payment of this claim, an article appeared in the local newspaper regarding the court proceedings which the Claimant had attended on the date in question. The matter in litigation concerned the closing of a bar, the "Beaver Club". Apparently the Claimant was a regular patron of the establishment and was at the courthouse to protest the legal action directed at closing the bar. The Carrier, upon discovering the reason for Claimant's absence from work, cancelled payment of the sick day and instituted an investigation on the following charge:

"Conduct unbecoming an employee when you allegedly marked off under false pretenses for your tour of duty Friday, October 7, 1977 and then allegedly and subsequently filed a false payroll report for compensation under the paid sick leave agreement for that date."

An investigation of the above charge was held and Claimant was found not to have marked off under false pretenses. However, Claimant was found to have filed a false payroll report and was disciplined in the form of two days without pay and cancellation of her sick pay for the date in question.

The claim was progressed through the required steps in the grievance procedure including the last step, a conference as required by the agreement and the Railway Labor Act (Section 2, Sixth-General Duties).

There is substantial disagreement between the Carrier and the Organization regarding the nature of the last conference and whether there was a conference at all. On the date the claim was set for conference a Section 6 Notice was the first item on the agenda and a docket of claims, including the case at hand, was scheduled for subsequent discussion. The instant case was not specifically addressed in the conference. However, the Carrier stated that there was no merit in any of the claims which were scheduled for conference that date.

It is the Carrier's position that the claim should be denied (1) since no bona fide conference, as required by the Railway Labor Act, was ever held; and, (2) the filing for sick leave on October 7, 1977 constituted a false payroll claim.

It is the position of the Organization that the Carrier violated the intent and purpose of the Railway Labor Act by foreclosing the possibility for a full discussion of the claim at the last conference. The Organization also contends that the Carrier's imposition of discipline was arbitrary and capricious since no evidence supports the charge.

A great deal of time could be spent discussing "who struck John" in the conference required by the Railway Labor Act. The submissions of both parties indicate contributory blame for failure to fully discuss the specifics in the claim before us. However, the record indicates that the minimum required by the Railway Labor Act took place. The claim was raised (generically), the Carrier denied that it was payable, and the conference ended. Good labor relations would have been better served if the parties had been able to resolve the dispute during a full and amicable conference. Although the conference was brief, nevertheless, it occurred and the claim was jurisdictionally ready for the next step in the process. The Carrier's position that the claim should be denied for failure to comply with the procedural requirements of the Railway Labor Act is found lacking in merit.

The record concerning the charge that Claimant filed a false payroll claim supports the Carrier's position. Claimant knew that she would not be at work on her assignment due to personal reasons and received permission to mark off for those reasons. Whether she would have been given permission to mark off had the Carrier known the nature of her "being in court" is speculative. In any event, Claimant was not entitled to the benefit of the sick leave agreement while on authorized personal leave. Certainly she would not have been entitled to the sick leave benefits if her leave was without proper permission. In either instance the claim for sick leave was improper. Carrier was justified in imposing discipline.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.

