

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22766  
Docket Number CL-22770

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8677) that:

(1) The Carrier violated the Rules of the Effective Clerk-Telegrapher Agreement when, following investigation held on August 10, 1976, it arbitrarily and capriciously suspended Mr. George W. Klug from service, and

(2) Carrier, because of such wrongful action, shall clear the service record of Mr. Klug in connection with discipline assessed and compensate him for all wage losses suffered during the period September 2, 1976 to September 14, 1976, a total of seven (7) work-days.

OPINION OF BOARD: On August 3, 1976, the Carrier advised the Claimant to attend an investigation concerning an allegation that he had failed to protect his assignment on July 28, 1976, on which date he had falsely claimed sickness.

Subsequent to the investigation, Carrier notified the Employee that he was assessed five (5) actual days suspension. Immediately thereafter, the Carrier amended the imposition of discipline to show seven (7) days suspension because of a two day "overhead suspension" which was activated by the incident here under review.

The record demonstrates that on the day in question, Carrier Officials received information from an undisclosed source that the Claimant would possibly be in attendance at a local race track that day. When the Official learned that the Claimant was absent from work, he and another Supervisor arranged to go to the race track to investigate. They testified that they clearly observed the Claimant at close range, even though the Claimant

categorically denied that he was present at the race track on the day in question. In addition, the Employee presented certain signed statements from others indicating that he was not at the race track at the stated time.

The Claimant was afforded an opportunity to present a medical certification from the physician, however he declined to do so.

This case presents a classic credibility dispute, and we are asked to disturb the Hearing Officer's findings in that regard.

There is ample evidence of record to support the Hearing Officer's conclusions, and it is clear that the individuals who testified against the Claimant were sufficiently familiar with him so as to avoid a case of mistaken identity

Accordingly, we will 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 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. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.