

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23150
Docket Number CL-22797

Richard R. Kasher, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8701) that:

(a) The Carrier violated the terms of the General Clerical Agreement when it unjustly administered discipline of thirty (30) days actual suspension to Mr. Frank W. Martin resulting from a spurious charge of being absent without permission from proper authority August 27, 1973 to and including September 16, 1973, and

(b) That Mr. Frank W. Martin shall be compensated for all wage and wage equivalents lost because of Carrier's violative action and his record cleared of any disciplinary blemish thereof.

OPINION OF BOARD: Claimant Frank W. Martin, Jr. alleged that the Carrier unjustly imposed a thirty (30) day suspension resulting from a charge of his being absent without permission from August 27, 1973 to September 16, 1973. At the time the discipline was assessed, Claimant had in excess of eighteen (18) years' of service with the Carrier and had a service record clear of any disciplinary action. The thirty (30) day suspension ran from September 24, 1973 until October 23, 1973.

Pursuant to his request made during the week of August 20, 1973, Claimant, the Chief Clerk at the District Sales Office in Elizabeth, New Jersey, was absent from work beginning August 27, 1973 for the purpose of having medical tests performed. On Wednesday, August 29, 1973 Claimant called and advised the Carrier that on the advice of his doctor, he would be absent from work for a total of three (3) weeks, rather than the originally contemplated period of one (1) week.

Shortly thereafter, on August 29, 1973, Claimant's supervisor, the District Sales Representative, attempted to call Claimant at his mother's home in Jermy, Pennsylvania. Claimant's supervisor was informed that Claimant was not home and he was given a phone number which led him to believe that Claimant was at a place somewhere in the State of Maine. The supervisor called the Maine number and spoke with the Claimant. During this conversation the Claimant said that he had been released from St. Joseph's Hospital in Carbondale, Pennsylvania on the previous day. The Carrier informed the Claimant that he would be

required to bring a doctor's certificate covering the entire period he was in the hospital and away from the office.

After this discussion with Claimant, the Carrier called St. Joseph's Hospital and was advised that no one by the name of "Frank Martin" had been registered as a patient in the last month.

On September 7, 1973, Claimant came into his supervisor's office to receive his paycheck and was informed that he would not be paid for the time he had been off because he had been out of his work area. After being asked if he had obtained a doctor's certificate, he submitted a certificate dated September 6, which read as follows:

"above patient (Claimant) under treatment for
acute hypertension, recommend a few days to
one week rest."

Claimant was informed that the doctor's certificate would cover, at most, only the period of September 6, 1973 to September 13, 1973; he still needed a certificate covering the first and third weeks of his absence. Such a certificate was never produced.

By letter dated September 17, 1973, Claimant was notified to attend an investigation to be held on September 25, 1973 to answer the charge of being absent without permission. In light of the testimony heard by the Board of Inquiry, the Board found Claimant guilty. By letter dated November 23, 1973, the Organization presented a claim alleging that the assessment of the thirty (30) day suspension was arbitrary and capricious.

The claim was denied by the District Sales Representative on January 14, 1974. The Organization then appealed the decision first to the Regional Sales Manager and then to the Vice President of Sales - East, and in each instance the claim was denied. A final appeal was discussed with the Director of Labor Relations on May 14, 1975 and then again on April 7, 1978 and was declined.

The claim must be denied. Claimant's evasiveness, demonstrated primarily by a lack of any comprehensive medical certificate showing that he was unable to work from the period August 27, 1973 to September 16, 1973, supports the Board of Inquiry's finding that the thirty (30) day suspension was not arbitrary or capricious.

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. Pauloe
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1981.