

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23232
Docket Number CL-23039

James F. Searce, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
 { Freight Handlers, Express and Station Employees
 {
 { The Belt Railway Company of Chicago

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8866) that:

1. Carrier violated the effective Clerks' Agreement when, following an investigation on November 2, 1978, it suspended Clerk Robert Muehlhausen from service for a period of two days, November 13 and 14, 1978;

2. Carrier shall now compensate Mr. Muehlhausen for all time lost as a result of this suspension from service and shall clear his record of the charges placed against him.

OPINION OF BOARD: After the Claimant failed to report for duty on October 20, 1978, he was notified by the Carrier to report for a hearing, the purpose of which was to "determine (his) responsibility, if any, in connection with (his) repeated absence from (his) 7:30 a.m. Stores Department chauffeur's assignment..." At the hearing Claimant produced a medical receipt from a dentist dated "10-20-78" stating "received from Muehlhausen twenty dollars for Professional Services." (Underlined portion handwritten; other words imprinted on the form). As a result of this investigation, the Claimant was assessed a two-day suspension. The Organization contested the disciplinary action on the basis that the charge against him was not specific and did not cite any rules violations. The Organization also asserts procedural error by the hearing officer, including receipt of the grievant's absentee and sickness record for the 1978 year before the hearing, prejudice on his part thus denying a fair and impartial hearing and error on his part to accept as controlling the proffered medical statement. The Organization also asserts the Carrier failed to substantiate its charges by a preponderance of evidence.

While the notice to the Claimant did fail to cite a rule, we find it sufficiently precise to alert him as to the basis of the investigation. We find the record unsupportable of the Carrier's assertion that it had no advance knowledge of why the grievant was contending he would be absent. While subsequent inquiry of the Claimant's supervisor at the hearing adduced testimony to the contrary, we cannot ignore the exchange between the hearing officer and the Claimant's supervisor:

Question (by the hearing officer)

"On Friday, October 20, 1978, did
(the Claimant) secure permission
to be off of work?"

Answer (by the Claimant's supervisor
who received the call)

"No, but he called in, you know, stating
that he was ill, I guess, which isn't a
question, you know, that he did call in
or not. It is just that he is absent
so much, you know."

As regards the Organization's claim that the hearing officer accepted a recapitulation of the Claimant's absence and sickness record, doing so in error and more so in that such receipt was prior to the hearing, it is noted that the document was submitted to K. H. Smith, Chief of Motive Power and Purchasing Agent and presumably in a line of authority over the Claimant; Smith was also hearing officer on this case. While such dual roles are often cited as bases for asserted impropriety in such cases as this, this Board has not seen fit to affirm such claims on that fact alone. However, we would concur that it would be inappropriate for consideration of the Claimant's overall absence and sick leave record, given that the pending charge was limited to absences in the Stores Department.

Thus, we assess the validity of the Carrier's actions on the basis of the Claimant's absences in that Department. Of the four absences cited, all were on Fridays, in conjunction with the Claimant's regularly scheduled days off (Saturday and Sunday). In contrast to the Carrier's claim, such absences were not consecutive Fridays, but did represent the fourth of eight Fridays he would have normally worked. We find merit to the hearing officer's refusal to accept the proffered excuse as proof that the Claimant was absent October 20, 1978 due to the necessity for dental work; it was incumbent upon the Claimant to ensure that the excuse was sufficiently precise to establish his presence at the dentist's office on that date; it did not.

We note that, while the Carrier asserts that "discussions" had been held with the Claimant concerning his absences, it produced no indication that such advice had been reduced to writing in the form of a disciplinary warning. It is a well-established principle that discipline should be corrective and progressive in nature. Here the Carrier determined to go from informal discussions to disciplinary time off. While we concur that the Carrier had reason to suspect the validity of the Claimant's repetitious absences from the job on Fridays, we conclude that it was better advised to have alerted the Claimant of such concern and formally warn him of the pendency of more severe discipline if such action persisted.

While we shall leave standing the Carrier's disciplinary action in principal, we shall direct that it be reduced by one day and that the Claimant be made whole of a day's pay at the appropriate rate.

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 Employee involved in this dispute are respectively Carrier and Employee 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 discipline was excessive.

A W A R D

Claim sustained as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 16th day of March 1981.