

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23301
Docket Number CL-23192

George S. Roukis, 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-8930)
that:

1. Carrier violated the effective Clerks' Agreement when, following an investigation on October 18, 1978, it assessed discipline in the form of a reprimand against the record of Mr. Raymond Alcaraz;

2. Carrier shall now remove the reprimand from Claimant's record and shall clear his record of the charge placed against him and shall pay Claimant three (3) hours' pay at the pro rata rate of his position for attending the investigation.

OPINION OF BOARD: An investigation was held on October 18, 1978 to determine whether Claimant was excessively absent from his duties during the month of September, 1978. Specifically, Carrier asserted that he failed to perform his assigned duties on September 5, 6, 7, 15, 23 and 30. Based on the investigative trial record, Carrier concluded that he was excessively absent and issued a letter of reprimand, dated October 20, 1978. This disposition was appealed.

In our review of this case, we recognize Carrier's well intentioned efforts to improve Claimant's attendance record and most certainly, view a letter of reprimand as a basic first step in the disciplinary corrective process. Moreover, we do not find that the assertion of a Rule H violation at the investigation was procedurally improper. The notice of investigation was sufficiently clear to permit Claimant an opportunity to prepare an intelligent and coherent defense and the nature of the charges fell within the definition of this rule. Its interpolation at the hearing did not affect his ability to refute the charges.

On the other hand, we concur with Claimant's contention that Carrier's reference to its February 23 and April 12, 1978 admonitory notices were improperly cited since they were not mentioned in the October 6, 1978 investigative notice or importantly noted and discussed at the October 18, 1978 hearing. Their identification and purported relevance in Carrier's March 13, 1979 letter and ex parte

submission occurred after the investigation and as such, prejudiced Claimant's right to contest them. The investigation was the forum within which to establish an unmistakable cause-effect relationship between these earlier letters and his implicit obligation to justify future absences.

Admittedly, without according the April 12, 1978 communication any judicial weight for the reasons aforementioned, we believe the Claimant was on notice to improve his attendance record, but the trial transcript does not contain any data relative to the February 23 and April 12 prior warnings. If these letters were brought out and developed at the hearing, a foundation would have been established indicating that Claimant was de facto responsible for adducing timely verification when he was absent. The parties' Agreement does not require a physician's certificate, except when an employee is hospitalized, involved in an automobile accident or claiming benefits under the sick leave rule. None of these contingencies are present here, although Claimant did submit a doctor's note verifying his absences on the September, 1978 dates. If the February 23 and April 12 letters were properly introduced consistent with our procedural rules, we could conclude by interpretation that he was required to submit a physician's note, concomitant to the time of his absences. From the record, as it presently stands, we cannot infer this requirement and as such, we are constrained by this finding to sustain Claimant's petition.

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;

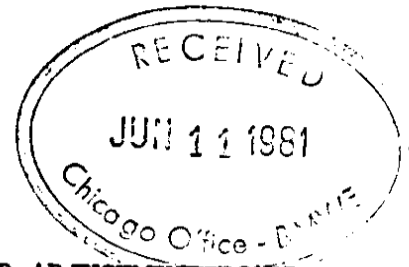
That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

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. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.