

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23969  
Docket Number CL-23746

Josef P. Sirefman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9277)  
that:

(1) Carrier violated Rules of the effective Clerk-Telegrapher Agreement when, on May 10, 1979, it unjustly dismissed Extra Yard Clerk Mr. P. T. Weaver from service of the Carrier, and

(2) As a result of such impropriety, Mr. P. T. Weaver shall be reinstated to Carrier's service in accordance with governing Agreement Rule 47.

OPINION OF BOARD: Claimant P. T. Weaver, an Extra Yard Clerk, was charged with failure to properly protect his assignment on April 4, 1979 on which date he claimed sickness. A hearing was held on April 20, 1979 and Claimant was dismissed from service on May 10, 1979. An appeal hearing was held on May 30, 1979 and the dismissal was reiterated by the Carrier on June 4, 1979.

A review of the record before this Board establishes that on April 4, 1979, although Claimant was off duty as sick until further notice since March 30th, he was seen by a supervisor during shift hours delivering a bundle of newspapers from a newspaper route vehicle to a pharmacy in his hometown, was aware that he had been seen, and immediately thereafter called in to the Carrier to say that perhaps with another night's sleep he might be able to mark up the next morning. Carrier could reasonably infer from this sequence of events that Claimant was not so sick on April 4th that he could not report for work. Therefore, there was substantial evidence to sustain Carrier's decision to discipline Claimant. However, given Claimant's length of service, the penalty of termination is too severe. Accordingly, Claimant is to be returned to service but without any back pay and this discipline is to constitute a last chance warning.

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

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That the discipline was excessive.

A W A R D

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Acting Executive Secretary  
National Railroad Adjustment Board

By Rosemarie Brasch  
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 27th day of August 1982.

