

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24839
Docket Number CL-2437

Ida Klaus, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9543)
that:

1. Carrier violated the effective Clerks' Agreement, when following two (2) investigations on October 16, 1980, it assessed Clerk Cynthia Moore two (2) separate three (3) day suspensions from service, to be served concurrently, during the period of October 20, through October 22, 1980, without just cause.

2. Carrier shall now be required to clear Clerk Cynthia Moore's record of the charges placed against her and compensate her for all time lost, including three hours' pay for her attendance at the investigations.

OPINION OF BOARD: Following separate trials, the Claimant was assessed two separate 3-day suspensions, to be served concurrently, on respective charges of failure to accept a work assignment and marking off sick under false pretenses on each of two days.

The Claimant, an Extra Board Clerk, when called for a vacancy at South Chicago on September 13 and on September 14, 1980, declined each assignment on grounds of illness.

The Claimant has asserted that she was unable to work on each of the days because she was suffering from a continuing named illness which at times prevented her from performing any work. She has produced a "disability certificate" of a doctor, dated September 26, 1980, attesting that she had been under his care over a specified period covering the two days in claim. In another document, also dated September 26, 1980, the same physician advised bed rest.

The Organization challenges the suspension as arbitrary and capricious, and seeks its annulment, on these grounds: The charges are totally unsupported by evidence. The Claimant was not given a statement of the precise charges against her, because the initial charges were expanded at the trial by including in the record of hearing a reference to two additional rule provisions.

The essence of the Carrier's case is that the Claimant's real reason for refusing the assignment was not her claimed illness, but rather that she simply did not wish to work at the South Chicago location. That position is based on the Carrier's view of the total significance of these undisputed record facts: The medical certificate was obtained after the charges were issued, and it did not specify any particular illness. Moreover, the Claimant did not

report being ill until after she was called for the work. Furthermore, for the week of September 8 through September 14, 1980, the Claimant on four of the five days refused an assignment to the same South Chicago location on claim of illness, but she did accept a call on one day for service in a vacancy at a different more desirable work location.

In rebuttal, the Organization explains the one day's service as an indication of the temporary variations in the Claimant's condition.

Upon careful review of the entire record and the awards cited, the Board concludes that there is substantial evidence to support the Carrier's decision. We note that the Carrier's conclusion that the Claimant marked off under false pretenses of illness is based on an inference it drew. We cannot say on this record, however, that its judgment, made on the undisputed facts, was unreasonable or arbitrary or based on mere conjecture. The judgment must stand. We also find the discipline to be fair.

Nor can we agree that the charges were improperly enlarged at the trial. The General Rules objected to were at most a clarification of the basic charge and incidental reference to them in no demonstrable way prejudiced the Claimant's rights.

The claim cannot be sustained.

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:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 8th day of June, 1984