

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25231
Docket Number CL-24745

Ida Klaus, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9629) that:

(1) Carrier violated the Agreement between the Parties when, on the date of March 12, 1981, it imposed discipline of fifteen (15) days' suspension from Carrier's service upon Stockman-Clerk H. N. Snell, East Side Yard, Philadelphia, Pennsylvania, through the combining of a five (5) day overhead suspension with a probation period of three (3) months not served, and a ten (10) day actual suspension from Carrier's service effective March 13, 1981, as a result of two (2) consecutive investigations held at 10:00 AM and 11:00 AM, March 5, 1981, and,

(2) As a result of such impropriety, Carrier shall now be required to reimburse Claimant H. N. Snell eight (8) hours' pay lost on each of eleven (11) work-days during the suspension period, March 13 to and including March 27, 1981, and his service record be cleared of the charges and suspension involved.

OPINION OF BOARD: Following consecutive hearings, the Claimant was assessed a five-day suspension and a ten-day suspension for each of two separate incidents occurring on two successive days.

The first incident occurred on February 26, 1981, when the Claimant, a Stockman-Clerk, failed to report to work due to illness. His wife notified the Chief Caller of his illness on that morning. It is undisputed that the call was made very close to the commencement of his shift. For this the Carrier charged the Claimant with failure to protect his assignment, for which he was given a five-day suspension.

The Claimant explained that he could not call sooner because he became ill while preparing to go to work, just 15 minutes prior to the commencement of his shift; his wife called immediately to notify the Carrier.

The second incident occurred the following day, February 27, 1981. Soon after the Claimant reported to work, his Supervisor directed him to remove his car because it was blocking a driveway. The Claimant refused and started a heated argument as to why he should not do so. Then, saying he was ill, the Claimant marked off sick and left the property. For this he was charged with insubordination and failure to protect assignment and was given a ten-day suspension.

The Organization argues that neither charge has been proven by substantial credible evidence. It asserts that on the first occasion the Claimant followed normal required procedure by calling in prior to the commencement of his shift. With respect to the second day, it argues that he merely questioned the need for the Supervisor's directive; that in marking off sick, he followed proper procedure, the burden being on the Carrier to ask for verification if it doubted the genuineness of the claimed illness.

As a second ground for challenging the discipline imposed, the Organization contends that the investigation was procedurally defective. Specifically, it asserts that: 1) the investigating officer was not the same official who determined guilt and imposed sanctions; and 2) the investigating officer unfairly excluded testimony.

The Carrier's position is that both charges are in all respects amply supported by substantial evidence, and that the Claimant was not denied a fair or impartial hearing. As to the first instance the Carrier asserts that the Claimant failed to permit sufficient notice for procurement of a replacement. As to the second charge, it asserts that the Claimant's walking off the job was not due to his claimed illness, but to his resentment at the order and his unwillingness to comply with it. As for the alleged procedural imperfections, it explains that the investigating officer did in fact make all determinations in the Claimant's case and that the letter of notification to the Claimant incorporating those determinations was signed and sent by an appropriate Supervisor.

Upon review of the entire record, the Board finds the first charge unsupported by substantial credible evidence. We are persuaded from the evidence that under the circumstances the Claimant gave reasonably prompt notice of his inability to respond and could not have done so sooner than he did. The claim will therefore be sustained and Claimant will be reimbursed for the 5-day suspension.

With respect to the charge of insubordination and failure to protect assignment, we find that there is substantial credible evidence to support the Carrier's conclusion. This claim will therefore be denied.

Finally, with regard to the asserted procedural defects, we accept as adequate the Carrier's explanation. Nor do we find any unfair exclusion of testimony.

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

The Agreement was violated insofar as the charge of failure to protect assignment on February 26 is concerned.

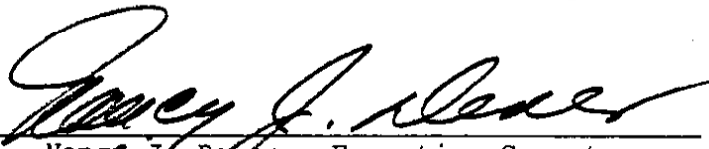
The Agreement was not violated insofar as the charges of insubordination and failure to protect assignment on February 27 are concerned.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.