

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25949
Docket Number CL-25837

Hyman Cohen, Referee

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9894) that:

1. Carrier violated the Agreement when it conducted an investigation in absentia on February 28, 1983 on Mr. Steven A. Watson.

2. Carrier violated the Agreement when it dismissed Mr. Steven A. Watson from service effective March 4, 1983.

3. Carrier shall now be required to restore Mr. Steven A. Watson to service and compensate him for all wage losses sustained from February 16, 1983 as provided by Rule 21(c) of the Agreement."

OPINION OF BOARD: The Claimant was employed by the Carrier at its Wood Street Yard facility, located in Chicago, Illinois. He was dismissed from the service of the Carrier, effective March 4, 1983, after an investigation in his absence, for "being insubordinate, quarrelsome, using profane and vulgar language and threatening bodily harm" to two (2) Supervisors during his shift on November 22, 1982.

The dispute between the parties is over the Carrier's refusal to grant a postponement of the Investigation that was held on February 28, 1983. By denying the postponement that was requested by the Claimant's Representative at the beginning of the Investigation, the Organization contends that the Carrier dismissed the Claimant "without a fair and impartial Investigation" in violation of Rule 21(a) of the Agreement.

The Investigation was originally scheduled for November 29, 1982, but was postponed at the request of the Claimant's Representative until December 7, 1982. When the Claimant was subsequently hospitalized, the Hearing was postponed indefinitely, and then rescheduled for December 23, 1982. Upon the request of the Claimant's Representative, the Hearing was again postponed until December 28, 1982. It was subsequently rescheduled for February 22, 1983. The Claimant's Representative requested an additional postponement, and it was granted until February 28, 1983, at which time a Hearing was conducted in the absence of the Claimant.

The sole issue before this Board concerns the propriety of the Carrier's refusal on February 28 to postpone the Investigation. The Board concurs with the position of the Organization that the number of postponements of an Investigation by themselves do no warrant the grounds for denying additional postponements. However, the facts giving rise to the central query

before this Board are not confined merely to the number of postponements of the Investigation that were granted by the Carrier. At the outset of the Investigation on February 28, 1983, the Local Chairman stated the following:

" * * * Mr. Watson, [the Claimant] called me today and asked for a postponement, he said that he couldn't make it due to his condition and that I thought that was in order and that I thought that if he could come back to work, he should be here then, that he's not back to work yet, I'd like to make an objection."

The Assistant Terminal Manager-Operations, who conducted the Investigation, denied the Local Chairman's request and proceeded with the Investigation. After carefully examining the record the Board concludes that the Carrier's refusal on February 28 to grant the postponement of the Investigation was reasonable. Approximately two (2) weeks before the Investigation was conducted, the Claimant's personal physician, Dr. Alvin Kanter, advised the Carrier's Medical Director, Dr. Heffrin, that the Claimant was no longer under his care as of February 8, 1983. At that time the Claimant also advised Wesley Cichosz, Terminal Manager, that his doctor had released him on February 7. On February 15, 1983, the Claimant was examined by Dr. Heffrin, who, on that date, released him for service. The Claimant did not report for duty since he had been removed from service, pending the Investigation.

Thus, the last information that the Carrier received before the beginning of the Investigation of February 28 was that the Claimant had been released by his personal physician as of February 7 or 8, 1983, and that the Carrier's Medical Director approved his return to work on February 15, 1983. It is in light of this factual context that Local Chairman's request for a postponement must be considered. He indicated at the outset of the Investigation that the Claimant had called him earlier that day, and asked for a postponement since he "couldn't make it due to his condition * * *." The Local Chairman did not elaborate on the Claimant's "condition". Moreover, it was not until a conference was held with the Organization on January 20, 1984, some eleven (11) months after both requests for a postponement, and the Investigation, that a statement from Dr. Alvin Kanter, the Claimant's physician, was furnished to the Carrier. In his statement, Dr. Kanter sets forth that the Claimant was "authorized off work from the time that I saw him on March 2, 1983 until March 21, 1983." The document is significant, in that Dr. Kanter fails to disclose both the nature of the Claimant's condition of February 28, 1983, and the reason why the Claimant was unable to be present at the Investigation held on that date. Indeed, there is no evidence in the record to indicate how or why the Claimant's "condition" prevented his presence at the Investigation that was held on February 28, 1983. Accordingly, the Carrier acted reasonably in refusing to grant a postponement of the Investigation that was requested by the Local Chairman at the outset of the Investigation that was conducted on February 28. Moreover, the Board concludes that the decision by the Carrier did not deny the Claimant due process and the "fair and impartial investigation" provided in Rule 21(a) of the Agreement.

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

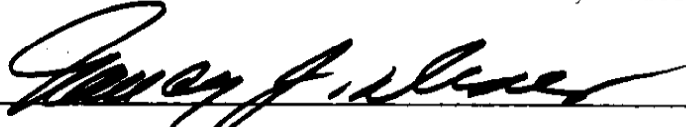
That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1986.