

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28161
Docket No. CL-28500
89-3-88-3-399

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(The Belt Railway Company of Chicago

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10309) that:

1. Carrier violated the effective agreement when, following an investigation on September 17, 1987, it issued discipline in the form of a ten (10) day suspension from service against Mr. John Pufpaf;

2. Carrier shall now rescind the discipline assessed, shall compensate Mr. Pufpaf for all time lost as a result of this suspension from service and shall clear his record of the charge placed against him."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Following his assignment as a Janitor Relief No. 2 on July 22, 1987, Claimant who had been furloughed since 1981, was to begin working five days a week. Carrier alleges that, as of that date, Claimant proved himself unwilling to perform full-time service for the Carrier. In its Notice of Investigation, Carrier charged Claimant with marking off sick under false pretenses on 14 dates between July 23 and August 20, 1987, and failing to be available on July 22, 1987. In the subsequent handling of the Claim, Carrier modified its charge and concluded that Claimant had marked off under false pretenses on 13 dates.

On three days during the week, Claimant's assignment began at 6 AM. On the two other days, it began at 3:30 PM. Carrier noted that of his 13 absences, twelve involved the 6 AM assignment. (During the entire period between July 22 and August 20, Claimant worked only seven days.) Carrier believed that since Claimant marked off as much as three and one-half hours before his 6 AM starting time and never less than one hour prior to the morning assignment, he was trying to avoid speaking to supervisory personnel. While the Organization alleged that Claimant had a bona fide illness, Carrier concluded that he was relying on outdated medical records from 1981 and a report filled out by a nurse dated July 24, 1987, that gave no indication that Claimant had undergone an examination. Further, Carrier disputed Claimant's contention that he had given medical evidence to the Personnel Department.

The Organization in this case questions Carrier's decision to charge Claimant with marking off sick under false pretenses rather than citing him in accordance with Rule 62 1/2. All other employees with absentee problems have been subject to the provisions of this Rule. Claimant was in fact issued a letter pursuant to the Rule but it was subsequently withdrawn. The Organization believes that Claimant has been singled out for discriminatory treatment.

The Board notes that Rule 62 1/2 outlines a special procedure for handling problems of excessive absenteeism. Section 62 1/2 (q)(1) states:

"Effective January 1, 1983, discipline for excessive absenteeism will be handled as hereinafter set forth in lieu of handling under the discipline rules, Rules 20, 21 and 22."

In the instant case, Claimant was not charged with excessive absenteeism, but rather with marking off sick under false pretenses. Rule 62 1/2 does not state that any case involving the subject of absenteeism in general must be handled under its provisions, only cases involving the specific subject of excessive absences. Under Section (p) of the Rule, for example, the parties addressed the issue of those who are absent and falsely claim benefits under the Rule. They are subject to the "applicable discipline rules of this Agreement." This is just one example of how an absence-related issue, other than excessive absenteeism, may be handled under the regular disciplinary procedure. In Claimant's case, Carrier found that he was absent and that the pattern of his absences was such that it could only conclude, given the lack of any verification of an illness during the period in question, that the reasons for his absences were bogus.

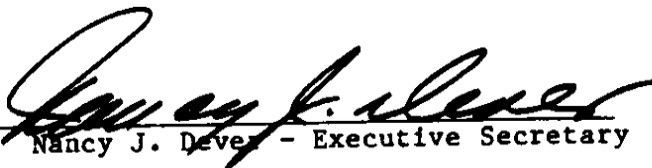
This Board has reviewed the entire record and we can find no basis for overturning Carrier's decision. The discipline assessed was neither arbitrary nor capricious.

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 16th day of October 1989.