

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28162  
Docket No. CL-28504  
89-3-88-3-400

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-10310) that:

1. Carrier violated the effective agreement when, following an investigation on October 1, 1987, it issued discipline in the form of a twenty (20) 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 were given due notice of hearing thereon.

On October 7, 1987, Claimant was assessed a 20-day suspension for having been found guilty of marking off sick under false pretenses on the Janitor Relief No. 2 position on August 21, 22, 23, 27, 28, 29, 1987, and September 3, 4, 10, 11, and 12, 1987. Claimant was also issued a letter of warning for 31 absences occurring in the third quarter of 1987, which was subsequently withdrawn.

Carrier points out that between August 21 and September 12, 1987, Claimant worked only five times and alleged that he was sick on the eleven other dates. Of the eleven absences, nine involved his 6 AM assignment.

Claimant, who is the subject of prior Third Division Award 28161 of this Board wherein he was disciplined for the same offense, continued his practice, according to Carrier, of calling in to markoff well before his 6 AM starting time to avoid speaking directly with supervisory personnel. Carrier found Claimant's explanation that he would lapse into two to four hour comas following attacks due to Irritable Bowel Syndrome to be unbelievable and found the documentary evidence submitted to support his contention that he was ill to be lacking any weight.

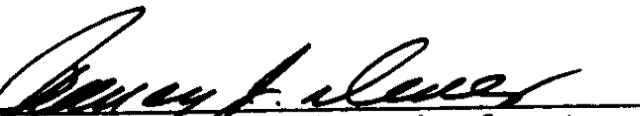
As in the prior case, the Organization raised a question about Carrier's failure to charge Claimant under Rule 62 1/2. We found in the previous Award that the Carrier was not required to do so under the circumstances. We so hold in this Award, given a clear pattern of avoiding work on his 6 AM assignment and the absence of sufficient medical evidence to support his contention that he was ill.

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.