

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 35950
Docket No. CL-35800
02-3-99-3-675**

The Third Division consisted of the regular members and in addition Referee Nancy F. Murphy when award was rendered.

**PARTIES TO DISPUTE: (Transportation Communications International Union
(Grand Trunk Western Railroad Incorporated**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Union (GL-12463) that:

- (1) Carrier unjustly dismissed Detroit Clerk J. A. Strode from its service effective August 8, 1997, as a result of an investigation held on December 12 and 13, 1996 and continuing on July 29 and 30, 1997 in which it failed to prove the charges and failed to provide Claimant with a fair and impartial hearing and review of the record.**
- (2) Carrier shall now be required to reinstate Mr. Strode to his former Voluntary Furlough Allowance status with all rights unimpaired and remove any mention of this discipline from his record and pay him all lost earnings and benefits as a result of his dismissal on August 8, 1997.”**

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Claimant commenced employment with the Carrier on September 3, 1969 and was actively employed until June 14, 1996, when he applied for and was granted compensated furlough status at the weekly rate of \$764.42.

In the meantime, in April 1996 General Manager Customer Service M. A. Kenney detected some "discrepancies" between the Claimant's amount of work time reported, and the daily sign-in reports. Consequently, the General Manager requested a full payroll audit which was completed at the end of September 1996.

Due to certain "inconsistencies" that were found during the payroll audit, the Claimant was instructed to attend an October 22, 1996 Investigation to determine his responsibility, if any, for falsification of payroll time reported while he was employed as a 7:00 A.M. to 3:00 P.M. Chief Clerk and Relief Timekeeper in the Transportation Information Center. Specifically, the basis of the Carrier's charge was that the Claimant allegedly claimed, and was paid for 29 dates in 1995 and 1996 for which he did not work.

By letter dated October 17, 1996 the Organization requested a postponement due to the reported illness of the Claimant's father. The Organization further requested the Carrier to provide a copy of all documentation that it intended to introduce at the Claimant's Investigation. In its November 6, 1996 response the Carrier agreed to the requested postponement and the Investigation was rescheduled for November 21, 1996. With respect to the Organization's documentation request, the Carrier noted that the Agreement between the parties did not require it to provide documents it intended to use at the Investigation and denied the Organization's request for the same.

Thereafter, the Organization specified the Carrier records it wanted to review and the Carrier promised to provide the same to be available for review on November 18, 1996. However, on November 14 the Organization requested additional documents and requested a second postponement for review of the same. The Investigation was then rescheduled for December 12, 1996. In the interim, the Organization requested that the Carrier summon 29 employees and require them to appear as witnesses at the December 12 Investigation, maintaining that all requested witnesses possessed "knowledge and information" relevant to the matter under investigation. The Carrier denied the request asserting that it was not "justified," but stated that it would continue the Investigation on December 13 should the Organization choose to summon the individuals and need additional time to accomplish the same.

The Investigation commenced as scheduled on December 12 and continued throughout December 13, at which time it was scheduled to reconvene on February 18, 1997. Immediately prior to the commencement of the Investigation, however, the Claimant fell and injured himself in the Carrier's General Office.

Approximately two months later, the Claimant was advised that the Investigation was rescheduled to resume on May 13 and 14, 1997, but the Organization again requested a postponement premised upon: (1) the Claimant's new representative had not had sufficient time to prepare, and, (2) the Claimant was still undergoing physical therapy account the injury he sustained on Carrier property on February 18, 1997. In

a letter rescheduling the Investigation, the Carrier informed the Claimant that additional postponement requests would not be granted unless the Claimant provided written documentation from his physician advising that he was unable to attend the proceedings due to medical reasons. In that connection, the Carrier assured the Claimant it would provide him with transportation to and from the Investigation, free of charge. Subsequently, the Organization did request another postponement, and appended to the same was a letter from the Claimant in which he personally requested a postponement until after he had been "tested, diagnosed and treated for his injury" and, "until his physical condition improved" which would enable him to defend himself against the charges. There were also two notes from the Claimant's doctor, dated March 20 and April 21, 1997, each of which stated that it "may be difficult for Mr. Strode to sit for any length of time" and that he "could not drive for more than fifteen (15) minutes."

The Investigation was once again postponed to accommodate the Claimant and rescheduled to reconvene on July 29, 1997. In correspondence confirming the July 29 date, the Carrier advised the Claimant that his treating physician had informed the Carrier that: "There is no medical basis which precludes Mr. Strode from attending the investigation." The Carrier again reiterated its earlier offer to provide the Claimant with transportation to and from the Hearing, further noting that the Investigation would proceed in his absence should he choose not to attend. In a July 28 letter, hand-delivered letter to the Carrier, the Organization advised the Carrier that the Claimant would not be attending the resumed Investigation.

The Investigation continued as scheduled on July 29 and 30, but the Claimant did not appear to refute the charges against him. By certified mail dated August 8, 1997 the Claimant was informed that he had been found guilty as charged for falsification of payroll time reported in that he claimed and been paid for time that he did not work on 24 of 29 dates charged in that he reported false payroll information and/or adjusted the time recorded in the computerized payroll reporting records to amounts greater than the time he actually worked while employed as the Chief Clerk and Relief Timekeeper in the Transportation Information Center.

The Organization protested the discipline, asserting that the Claimant was not afforded a fair and impartial Investigation and that the Carrier had failed to sustain its burden of proof. The Carrier denied the appeal maintaining that the Investigation testimony provided ample proof of the Claimant's guilt and that the discipline of dismissal was warranted and commensurate with the seriousness of the offense.

Exhaustive examination of the 405 page transcript of the four days of Investigation, not to mention the numerous exhibits in this case, convinces the Board that the Carrier made a persuasive showing that the Claimant made pay claims for 24 dates upon which he did not work. Notwithstanding repeated postponements granted to the Claimant by the Carrier at the request of the Organization, and without

demonstrating good cause for further postponements, the Claimant boycotted the last two days of the Investigation. Despite strenuous efforts on his behalf by the Organization, in the final analysis the Claimant presented no credible rebuttal of the Carrier's prima facie case. Therefore, this claim is denied.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

Dated at Chicago, Illinois, this 20th day of February, 2002.