

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36938
Docket No. CL-37003
04-3-01-3-669

The Third Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood (GL-12785)
that:

- (1) The Carrier violated the rules of the parties' Agreement made effective December 1, 1949 and amendments thereto, particularly Rules 13, 36, 46, 48, among other applicable rules and agreements, when on Wednesday, March 14, 2001 it held a needless investigation conducted in an unfair and partial manner, which resulted in an unjust decision of reprimand against the employment record of employee Ms. Simone Groesche, whose only wrongdoing was being absent from work January 4, 5, 6, 7 and 10, 2000 account of upper respiratory infection, on March 9, 2000 absent account of illness and absent May 8, 18, 19, 22, 23 and 24, 2000 due to having heart palpitations for which she was in and out of the hospital during said period having tests.
- (2) The Carrier shall be required to expunge from employee Groesche's employment record all notations placed thereon resulting from the unfair and partial investigation which produced an absurd decision of guilt. Importantly, employee Groesche was not granted the right to face and interrogate her accuser.

- (3) The Carrier shall be required to cancel the Clerical Absenteeism Procedural Policy account of its absurd interpretations and applications of its provisions to reprimand, suspend or dismiss employees who have the misfortune of being off work more than normally expected in a six month period due to illness, injury and/or medication problems, etc., regardless if the absences were legitimate and approved, and paid for under the sick leave rule.
- (4) The Carrier knowingly violated the provisions of Rule 36 of the current Agreement when it held a faulty investigation and applied unwarranted discipline in this case beyond thirty (30) days from the date the irregularity was known by the proper Carrier official.
- (5) This dispute has been presented and progressed in accordance with the provisions of Rule 13 of the Agreement and should be sustained."

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.

After thoroughly and carefully reviewing the record, the Board concludes that there is insufficient evidence to find that the Claimant committed the charged infraction. Thus, the reprimand shall be removed from the Claimant's record.

The Board also holds that it lacks jurisdiction to rescind the Carrier's attendance policy because the Board is not empowered to dispense declaratory relief. (See Third Division Award 36177.)

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of March 2004.