

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23905
Docket Number CL-24159

George S. Roukis, Referee

PARTIES TO DISPUTE: {
(Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
{ The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9440) that:

1. Carrier violated the Rules of the effective Clerk-Telegrapher Agreement when, on September 5, 1978, it arbitrarily and capriciously suspended 1st Trick Operator Clerk R. G. Butcher, Washington Court House, Ohio, from service of the Carrier, and

2. As a result of such impropriety, Carrier shall be required to compensate Claimant R. G. Butcher eight (8) hours* pay for each of five (5) dates held from Carrier's service between September 5 and 9, 1978, and

3. That Carrier shall be required to compensate Claimant R. G. Butcher eight (8) hours' pay because of being denied "Sick Pay" for August 1, 1978, and

4. That Carrier shall be required to compensate Claimant R. G. Butcher eight (8) hours' pay because of being held from Carrier's service on August 2, 1978, and

5. That Carrier shall be required to compensate Claimant R. G. Butcher eight (8) hours' pay for August 7, 1978, because of being improperly held from Carrier's service to attend an investigation incident to Carrier's improper action, and

6. That Carrier shall be required to pay Claimant R. G. Butcher eight (8) hours' holiday pay for September 4, 1978 (Labor Day holiday) denied through Carrier's improper action.

OPINION OF BOARD: The pivotal question before this Board is whether Claimant was legitimately absent on August 1, 1978. If he were not properly absent, then Carrier had the right to deny his claim for sick pay that day, convene an investigation to ascertain whether he failed to protect his position and discipline him upon a finding of guilt.

On the day in question, Claimant's wife had called the Chief Train Dispatcher at Chillicothe, Ohio at approximately 4:55 A.M. to advise her husband would not report to work that morning because he was ill. Claimant

was the regularly assigned incumbent of the 7:00 A.M. to 3:00 P.M. 1st Mck Operator-Clerk position at Washington Court House, Ohio. The local carrier official was unable to find a replacement until 8:15 A.M. which necessitated some inconvenience. The Tower had to be closed until the other employe showed up. Believing that Claimant impermissibly reported off sick, the Chief Train Dispatcher decided to visit the little league baseball park in Chillicothe to see whether Claimant, an avid fan of little league baseball, was at the tournament game. He was accompanied by the Road Foreman of Engines. At approximately 1:55 P.M., the two officials found Claimant sitting behind the concession stand immediately in front of the back stop and he attempted to elude them by exiting toward the parked automobiles. When the officials confronted him in the parking field and inquired about his condition, he apprised them that he had not marked off sick. Because the Chief Train Dispatcher believed that Claimant had an obligation to report to work if he had recovered from his illness and importantly, that he had improperly taken off work that day to attend the game, he removed him from service. Claimant was notified on August 2, 1978 that an investigation was scheduled for August 7, 1978 and he returned to service on August 3 pending the investigation's outcome. On August 29, 1978 he was informed by the Superintendent Agencies and Yard Offices that he was found guilty for failing to promptly protect his position and suspended from service for five (5) days beginning September 5, 1978. This disposition was appealed.

In our review of this case, we have carefully considered the procedural and substantive arguments advanced by Claimant, but we have not found them persuasive. The investigation was conducted in accordance with the requirements of contracted for due process and the evidence adduced at the hearing fully shows that he failed to properly protect his position on August 1, 1978. Claimant was impermissibly absent on August 1, 1978 and he acted at his peril when he did not report to work but rather attended a little league baseball game. Carrier had the right to remove him from service that day, deny his claim for sick pay and discipline him for his infraction, consistent with the applicable rules of the controlling Agreement and it acted properly when it took these measures. However, we find that Claimant was improperly held out of service on August 2, 1978, since he was returned to service on August 3, 1978, four days prior to the August 7th investigation. He should have been returned to work on August 2 under these circumstances. Thus we will award him the eight (8) hours pay claimed in Part 4 of the Statement of Claim. The penalty of five (5) days suspension on the other hand, was not unreasonable or an abuse of managerial discretion, given the seriousness of this offense and we will sustain Carrier's disciplinary action.

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 violated to the **limited** extent expressed herein.

A W A R D

Claim **sustained** to the **extent** expressed herein.

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

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 8th day of June 1982.