

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19703  
Docket Number CL-19635

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: ( (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**  
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7043)  
that:

1) Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it failed to afford employee S. Flyer a fair and impartial investigation.

2) Carrier's action in suspending employee Flyer from actual service for a period of thirty (30) days "as without proper cause and therefore arbitrary, capricious, unfair and unreasonable.

3) Carrier shall now be required to clear the record of the charge made against employee S. Flyer and pay her for all time lost.

OPINION OF BOARD: Under date of June 30, 1970, Carrier addressed the following letter to Claimant:

"A review of your work record indicates that you have an excessive number of days in which you have been late in reporting for work.

Reporting to your assignment in this office on time is a condition of your employment and reflects your attention to the **responsibility** of the position you hold.

It is expected that there will be a decided improvement in your adherence to the office rules concerning on time arrival so that it will not become necessary to deduct the time lost on a minute basis."

Subsequently, by letter dated November 17, 1970, Carrier gave Claimant notice of hearing on charges of "being tardy for work on October 22, 1970 and tardy **returning** from the lunch period on November 2nd and **4th**, 1970." After the hearing, Carrier suspended Claimant for a thirty-day period for being 45 minutes late in reporting for the beginning of duty on October 22, 1970, and for being tardy in returning from lunch **on** November 2 and 4, 1970. The lateness involved in the lunch situations were respectively 2 minutes and 1 minute. Carrier made a deduction from wages for the 45 minutes on October 22, but did not make **any** deduction for the late returns from lunch.

As regards the October 22 tardiness, Claimant phoned in to say she had to locate a sitter for an unwell pet. Her reason for the luncheon tardiness was that a discrepancy existed between her watch and the office clock which controlled her hours. Carrier's lunch room clock was also involved in the discrepancy, since it coincided with ~~her~~ watch but not with the office clock.

All of these reasons were noted on tardy report forms as "not acceptable" and the hearing **was** predicated on ~~the~~ fact of tardiness without regard to the underlying reasons. The **Organization** did not challenge this procedure, so the issue of whether claimant **was** tardy for adequate reason is not before this Board. The issues of record are whether claimant received a fair and impartial hearing and whether the discipline of a thirty-day suspension was unfair and excessive.

The hearing record cannot be said to be a model, from the standpoint of letting in all potentially relevant information. On the whole, though, the record does not reflect any substantive unfairness or material prejudice to claimant's rights. However, we are concerned that the discipline is excessive in light of the chain of events preceding the charges. Carrier's June 30, 1970 Letter informed claimant that tardy time would be deducted from her wages. This was done in respect to the forty-five minutes of tardiness on October 22; however, this **same** tardiness was included in the subsequent charges of tardiness and formed a substantial part of the basis for the discipline of a thirty-day suspension. The Carrier's November 7 letter gave no indication that the serious sanction of suspension might be imposed for tardiness. The letter only suggested that tardy time would be deducted from wages and Claimant's testimony at the hearing indicates that this was claimant's impression from the letter. We believe therefore that Carrier's Letter tended to mislead Claimant and also that **Carrier** acted unreasonably in imposing two disciplines for the same October 22 tardiness. Accordingly, we find that the October 22, 1970 tardiness was not a proper subject for charges and that Carrier abused its discretion in bringing charges thereon. Thus the charges which are sustained by the record consist of the tardiness of two minutes after one lunch period and of one minute after another lunch period. Obviously the discipline of a thirty-day suspension is disproportionately severe to these offenses and we find that Carrier abused its discretion in assessing such discipline. We shall therefore sustain the claim.

**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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

E. A. Killian  
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1973.