

NATIONALRAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number **20221**
Docket Number CL-20349

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station **Employees**

PARTIES TO DISPUTE: (
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the Burlington Northern System Board of
Adjustment (GL-7362) that:

1. Carrier violated the Working **Agreement** with an effective date of March 3, 1970, when on the eleventh day of **June**, 1972, it suspended Mrs. **Laverne** D. Craft from her regular assignment of PBX Operator, Regional Office Building, Chicago, Illinois, for a period of ten **(10)** days.

2. Carrier shall be required to compensate **Mrs.** Craft for all **wage** loss due her from the first day she was held from service and continuing until she was restored to service, clearing her record of the charge.

OPINION OF BOARD: This is an appeal from a discipline case in which Claimant, a Telephone Exchange operator, was given a ten day suspension in connection with an incident which occurred in the Carrier's Regional Office Building, Chicago, Illinois, on **May** 16, 1972. The **Employees** contend the discipline should be set aside, both on procedural grounds and on the merits. With regard to procedure, the Employees complain that the decision was rendered by an official other than the official who conducted the hearing and that, at one level of the appeal, the decision had to be reviewed by an official subordinate to the one who rendered it. The record before us fails to reveal any impairment of Claimant's due process rights, as a **result** of these procedures, so we shall proceed to consider the merits.

After hearing, the Carrier made the following findings of guilt against Claimant: 1) Failure to protect position as Telephone Exchange **Operator** at the assigned starting **time** of 11 **PM** on Tuesday, **May** 16, 1972; and 2) **Failure** to comply with general instructions as stated in letter from **E. F. Hutchinson** dated April 6, 1972, by being on another floor of the Chicago Regional Office Building without authority at approximately **11:05 PM, May 16, 1972.**

The Claimant's position, with **an** assigned starting time of **11** P.M., was located on the second floor of the Regional Office Building. On the date in question she signed into the building at **10:40** P.M.; she then went to the tenth floor and weighed herself on the scales **in** the doctor's office, which the doctor had granted permission for her to do. Shortly before **11** P.M., according to the uncontradicted testimony of a cleaning **woman**, the Claimant said she felt unwell and had need to use the bathroom. After using the tenth floor bathroom, she went to her duty post on the second floor. The **Claimant** said she arrived at her duty post at about **11:03** P.M., but the Carrier's witnesses said about **11:10** P.M. Prior to the incident the **Claimant** had received an April 6, 1972 letter from Mr. Hutchinson which, inter alia, directed her not to go to floors other than her own during duty hours; however, the Claimant said she did not understand the letter and had so indicated in her April 9 response thereto.

The uncontradicted evidence that Claimant had need to **use** the bathroom shortly before **11** P.M. adequately justifies her not reporting for duty at **11** P.M. However, the evidence does not show justification for Claimant being on the tenth **floor** in contravention of Mr. **Hutchinson's** directive. Her April 9 letter to Mr. Robinson shows that she understood at least the prohibition against being **on** floors other than her own. Also, we do not believe that the doctor's permission to use the scales relieved her of the obligation to abide by Mr. Hutchinson's **directive**. We conclude therefore, on the whole record, that the first infraction **must** be set aside and that the second infraction is supported by substantial evidence of record.

In regard to discipline, since the ten day suspension was assessed for the two infractions combined, without **apportionment** between the two infractions, we shall determine an appropriate discipline for the second infraction. We note in this regard that, in assessing discipline, the Carrier considered the Claimant's prior record which is not a good one. Nonetheless, the record shows that most of the time spent by Claimant on the tenth floor was before her starting time of **11** P.M. She checked into the building at **10:40** P.M., went to the tenth floor, and, according to Carrier's findings on the second infraction, she was on the tenth floor at **11:05** P.M. Since these facts show that Claimant's **misbehaviour** involved **only** five minutes of on-duty **time**, and since prior Board Awards hold that the discipline **must** be commensurate with the offense, we believe that a one day suspension is the appropriate measure of discipline for the second infraction.

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 **Employees** involved in this dispute are respectively Carrier and **Employees** 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

The discipline is reduced.

A W A R D

The discipline is reduced to a one day suspension, and **Carrier** shall compensate Claimant for time lost from the second day and continuing through the succeeding days of the ten day suspension period.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1974.