

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20227
Docket Number a-20151

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7247) that:

i) Carrier violated the Clerks ' Rules Agreement when it failed to afford employee L. Kas a fair and impartial investigation and assessed a 60-day suspension arbitrarily and without just cause.

2) Carrier shall be required to clear the record of employee L. Kas and compensate her for all time lost.

3) carrier shall be required to Pay on the total amount claimed in Item 2 above, 7% as interest commencing December 18, 1971 and compounded annually until the claim is paid in full.

OPINION OF BOARD: Claimant, a conptoneter operator, was charged with being tardy for work on November 24, 1971 and for being absent on November 29, 1971. Following an investigation, held on December 7, 1971 she was found guilty by Carrier and assessed a sixty-day suspension.

Petitioner asserts that Claimant was not afforded a fair and impartial investigation and further that the evidence presented at the investigation did not warrant the discipline which is characterized as being arbitrary and without Just cause. These contentions are denied by Carrier.

Carrier's hearing officer in this dispute subjected himself to scrutiny and complaint for barring certain questions put to witnesses in cross examination by Claimant's representative and also for allegedly refusing to answer certain questions put to him. Our review of the transcript of the hearing reveals that the hearing officer's conduct was far from exemplary; he did bar certain questions as not being relevant to the investigation with great adamance, when these questions appeared to be at worst tangentially relevant and not wholly inappropriate. However, we do not conclude that this conduct significantly prejudiced Claimant's rights to a fair trial under all the circumstances. Two recent Awards involving the same

parties, Awards 20014 and 20148, were cited by the Organization in support of this argument. A study of those Awards however, reveals obvious flagrant misconduct on the part of the hearing officer, which is apparently substantially different from the conduct of the hearing officer in this dispute. Further, Petitioner argues that the investigating officer erred when he personally **refused** to answer questions pertaining to the charges. We note that the attempts to question the hearing officer were generated by an argument pertaining to his rulings on relevance of testimony and appeared to be unrelated to the substance of the hearing; further there was no indication at that time or at any time in the hearing or thereafter as to why the hearing officer was needed as a witness. Accordingly, conforming to our reasoning expressed in Award 19916 involving the same Jai-ties, we must reject the argument pertaining to the refusal to answer questions.

Petitioner's argument on the merits of this dispute suggest that the offense committed by Claimant, "standing alone" does not justify a sixty-day suspension. There is no dispute that Claimant, who regularly reported for work at 8:25 A.M. telephoned her superior at 9:15 A.M. on November 24th stating that she had overslept and came to work at 10:10 A.M. There also is no dispute that Claimant was absent on November 29, 1971 although there are conflicting reasons for the absence in the record. For this reason it is clear that there was sufficient evidence to support the finding of guilt by Carrier. Once the guilt of Claimant is established it is proper for Carrier to evaluate the work record of the employee in assessing 3 penalty; In fact unions frequently laud the concept of progressive discipline as both appropriate and equitable in deterring rule infractions. In this case Claimant's record indicated a long history of warnings for repeated tardiness and absenteeism culminating in a thirty-day suspension on June 26, 1970. Under these circumstances Carrier's imposition of discipline in the instant case seems quite reasonable. There is no basis in the record herein to cause us to intervene and upset the Carrier's proper exercise of discretion.

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;

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That this Division of the Adjustsent Board has jurisdiction
over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulson
Executive Secretary

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