

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21559
Docket Number CL-21406

David C. **Randles**, Referee

(Brotherhood of Railway, Airline and Steamship
{ Clerks, Freight **Handlers**, Express and
{ Station **Employees**
PARTIES TO DISPUTE: {
(Robert W. **Blanchette**, Richard C. Bond and
{ John H. **McArthur**, **Trustees** of the Property
{ of Penn Central Transportation **Company**, Debtor

STATEMENT OF CLAIM: **Claim** of the System Committee of the Brotherhood,
GL-7963, that:

(a) The Carrier violated the Rules Agreement, effective **February 1, 1968**, particularly Rule 6-A-1, when it assessed discipline of "Dismissed in all Capacities", later reduced to a suspension from **May 15 to June 10, 1974**, on Claimant, Miss **Mary** Christmas, Clerk in the Carrier's Customer Accounting Department in Philadelphia, Pennsylvania.

(b) Claimant, **Mary** Christmas' record be cleared of the charges brought against her on **May 17, 1974**.

(c) **Claimant**, **Mary** Christmas be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Claimant **Mary** Christmas entered the service of the Carrier as a clerk at Philadelphia, Pennsylvania, on **June 19, 1967**. As a result of alleged insubordinate conduct during the afternoon of **May 15, 1974**, claimant was removed from service that day. By a written notice dated **May 17, 1974**, **claimant** was instructed to attend an Investigation on **May 21, 1974**, in connection with the following charge: "Insubordination, disobeying order of superior and creating disturbance both prior to and subsequent to the insubordination." The Investigation was held; claimant was present and represented. As a result of the Investigation, the **claimant** was dismissed from **service**; however, said dismissal was appealed to the Superintendent of **Labor** Relations who, by letter on **June 10, 1974**, extended leniency to the claimant reducing the discipline of dismissal to a suspension. The discipline of suspension was appealed by the Organization which contends **that** the charge did not comply with **the** criteria of **Rule 6-A-1** which requires said charges to **be** explicit. **The** Organization notes in this regard that the charge is general and it does not even note the date and time of **said insubordination**.

The Organization further contends that the hearing officer did not make the finding which in and of itself invalidates the discipline, for it is a denial of due process.

The Carrier asserts that there is substantial evidence in the record which establishes the **claimant's guilt** of insubordination. **The** testimony of the claimant's supervisor as well as the testimony of her supervisor's superior support the fact that the claimant was insubordinate. Each of these Carrier witnesses at the Investigation testified as to his first-hand direct knowledge of said insubordination. A third witness to the event heard the claimant tell her supervisor "to get off her back" together with some strong epithets. **The** claimant herself blamed the trouble on her supervisor; however, such insubordination remained unchallenged in the record.

It is a general principle of labor relations and of the **arbitral** process that **employees** must obey their **supervisor's** order (except in situations affecting health and safety) and grieve later. The claimant did neither.

The Organization contends that the **charge** was not explicit which produced a situation at the Investigation which deprived the claimant of due process in **that** not knowing **the** charge, she was unable to prepare a defense.

The Board could sustain the **claim** if this were the only reference to the act of insubordination; however, part of the record is the letter from her superior, written on the day of her insubordination and hand-delivered to her. The body of said letter is as follows: "Notification is hereby given that you are held out of service beginning May **15, 1974 - 4:00 P.M.**, in connection **with** insubordination by disobeying a direct order of your Supervisor. You **will** be advised promptly with regard to any further action that **will** be taken." (Signed by R. E. Semerad, Manager-General Credit and Collection) **This** letter, together with the **Notice**, leaves no doubt in the opinion of the Board that the claimant knew the exact offense and the date on which it occurred.

Relative to the allegation by the Organization that the hearing **officer did** not make the determination of guilt or innocence, there is no article or rule within the Agreement which prescribes who shall conduct the hearing or that the official conducting the hearing must **be the** one and the same person who makes the decision **imposing discipline**. **This** fact is supported by many awards of this **Board**.

(Award 13383 - Bali, being one **example**.) If there is no reference in the Agreement as to who shall **make** the decision regarding discipline, then this Board **may** not stipulate that the **Agreement** was **violated**.

The claimant in this case was afforded due process, including Notice and representation. **The** record of the Investigation substantiates the charge of insubordination.

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

That the Agreement was not violated.

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of **Third** Division

ATTEST :

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of May 1977.