

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21982  
Docket Number CL-21663

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Port Terminal Railroad Association

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8202) that:

(1) The Carrier violated the rules of the current Clerks' Agreement, including, but not limited to Rule 26 and the Extra Board Agreement of April 3, 1969, when it arbitrarily and capriciously **suspended** Ms. B. A. Harrison, from its service **from 12:00 p.m. July 14, 1975, to 12:00 p.m. July 26, 1975, a total of 12 calendar days.**

(2) Carrier shall compensate Ms. Harrison **for all time lost**, including any overtime she could have earned, while suspended **from** the service of the Carrier **from 12:00 p.m. July 14, 1975 to 12:00 p.m. July 26, 1975, and shall clear her record of all charges and discipline assessed.**

OPINION OF BOARD: Claimant, working on the **Extra Board**, **passed** up a call with the **acquiescence** of the Chief Clerk on **July 12, 1975**. As a result she was suspended for seven calendar days and also was required to serve a previous **five-day** deferred suspension. Subsequently, at Claimant's request, she was accorded an investigation as provided in the Disciplinary Rule (Rule 26) of the Agreement. Rule 2 (c) of the **Extra Board Agreement** is relevant to this dispute:

"(c) **Employees** on the Extra Board missing calls at the **regular** calling times shall be **removed** from the Board for a 24 hour period, and at the conclusion of such 24 hour period will be placed back on the Board following the last rested extra employee. An **extra** employee consistently **missing** calls during **regular calling time** may be subject to discipline."

**Carrier indicates that Rule 2 (c) relates** to missed calls and that this infraction involved a "passed" call. Carrier argues that Claimant was guilty of passing a call for a position for which she was **qualified** to work and that picking and choosing assignments by Extra Board employees was intolerable. Carrier **also** points out that Claimant had been **put** on notice previously that her practice of passing **calls** would **not** be tolerated further.

Petitioners base their defense first on alleged serious error in the conduct of the hearing in that Claimant's past record relied on by Carrier was not produced as requested. Further it is argued that **Claimant's** request to pass the call was approved by Carrier's representative, the Chief Clerk.

This dispute is **troublesome** in that Carrier's **motives**, at least **as** expressed **in** their submissions to this Board, are thoroughly understandable and proper. It is quite clear that Carrier cannot tolerate **Extra** Board employees being given the right to determine which jobs they prefer to work, regardless of Carrier needs. However, in this dispute, **Carrier's** position is not sound. First, Carrier indicated at the investigative hearing that the discipline imposed on Claimant was based in part on her **previous** record (as distinguished from that of other **employees** who were not disciplined for similar infractions). However, Carrier failed to produce any **information** with respect to Claimant's past record, even though **urgently** requested to do so by Organization representatives. **Hence** it **must** be concluded that Carrier did not sustain its position with **respect to** the quantum of discipline imposed since it failed to produce the evidence essential for that purpose.

The **fact** that Claimant's **action** in "**passing**" the **assignment** was approved by the Chief Clerk is also a major flaw in Carrier's position. Testimony at the investigation confirm that the Chief Clerk has the authority to permit **employees** to pass a call. There is no indication that any **rules** were violated by Claimant for passing a call with the approval of the Chief Clerk. Carrier, following this **dispute**, in October of 1975, corrected the basic problem by informing all the clerks that they **would** not be permitted to "pass" a call. However, that action **obviously** had no bearing on this dispute. Under the circumstances, the Claim must be sustained.

**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

That the Agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: *A.W. Paulos*  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.