

Award Number 22152 Docket Number CL-21936

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, (GL-8321), that:

- 1. Carrier violated **the** Agreement when it failed to give Miss C. Seeley a fair and impartial hearing, and in abuse of discretion suspended claimant from service for **59½** days.
- 2. Carrier shall compensate **claimant** for all wages lost during suspension from January 29, 1976 to **March 28**, 1976.

OPINIONOFBOARD: Claimant was notified to attend an investigation concerning an asserted insubordination and, subsequent to the investigation, she was assessed a 59½ day suspension.

The asserted insubordination arose concerning Carrier's questions to the **employe regarding** alleged delays in performing required duties, and on the day **in** question, the **instant** dispute erupted over a failure to **perform** certain filing. The Supervisor asserts that **Claimant** refused **to perform the** work whereas **the employe** insists that she did not refuse, but only stated that time did not permit her to accomplish the function.

When **Claiment was** questioned regarding the incident, she requested that her local union representative be **summone**d, but that request was denied. At the end of that discussion, she was suspended from service for insubordination.

The Claimant's version of the events are **summed up** in the following excerpt from the investigation:

. . . At this time, he proceeded into wanting to know why I was making a big deal wer doing the filing. At this time, I requested the presence of Floyd Walters. Mr. Wilson's reply was that there was no need for Mr. Walters to be present because we were only going to have a discussion **on** the matter. Then he proceeded to tell me about the work overload and how at certain times of the year there is a work werload, and they have to call upon the other employees in the office to share in cleaning up this work werload. I stated that I felt that I was doing my share of the work, the overload-of the work. I was doingvarious typing; I was opening, stamping and distributing the mail, and ordering supplies for the office. At this time, Mr. Wilson proceeded to tell me that we were all here for an eight hour day and it should not make any difference as to what our workload dealt with, and that he felt, with the type of job that I was on, that I would not mind doing the other duties that are given to me. Jie felt that it would break up the monotony of my job. I agreed with this stat-t but explained to him that I did not feel that I should have to do the filing seeing as I was doing the typing, the mail and ordering supplies. At this point Mr. Wilson instructed me that filing is other duties as assigned. I told him that other duties as assigned was duties pertaining to the particular job, and most supervisors use this as a crutch. I got a little bit upset and started crying. I stated that if he could find someone else in the office to do the typing, the opening and distributing of the mail and ordering of the supplies, then I would do the filing. I also stated that I did not mind doing the filing of the correspondence and A.F.E. files, but I felt it was unfair to do Janet's filing. At this time I again requested Floyd Walters be present and told Mr. Wilson that Floyd could be reached on extension 230, which Mr. Wilson ignored and stood up and told me as far as he was concerned I was insubordinate and that I could leave the premises . . . "

The Organization does not suggest that a union representative is required at every **employe** interview, but it contends that **Carrier** should comply with an appropriate request when the **employe** "reasonably believes that discipline will result from the interview."

Carrier argues that the evidence of record shows a wilful insubordination in that Claimant refused to comply with specific instructions.

Although the alleged insubordinationwas limited to a specific time, i.e., 11:45 a.m. on January 29, 1976, and was aimed at a specifically named Supervisor, the lo-minute meeting coucededly dealt with the general topic of work performance. The parties disagree as to the context of the discussions and, in our review of the record as a whole, we have a significant doubt as to whether Carrier's evidence shows a wilful insubordination or merely a heated exchange as to basic work content, job description, etc.

It is not this Board's function to substitute its judgment for that of Carrier, but we are constituted to **Assure** that a Carrier establishes its case by a substantive showing. Here, we are unable to find such a showing with any degree of certainty.

Quite possibly, had the **Supervisors** in question acceded to **Claiment's** request for Union **representation** under this type of a circumstance; the matter **may** have been disposed of short of submission here. **But,** we do not hold that a Union representative must be present at every **meeting.** Certainly, a Supervisor does have the right to meet with an **employe** without a Union representative present; according to the cir-tances of the **individual** situation.

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 **Employes** involved in this dispute **are** respectively Carrier and **Employes** within the meaning of the Railway **Labor** Act, as apprwed June 21, 1934;

That this Division of the Adjustment **Board** has jurisdiction wer the dispute involved herein; and

That the agreement wss violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: UW. Paules

Executive Secretary

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

