

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22741
Docket Number CL-22777

Paul C. Carter, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8717) that:

1. The Carrier acted in an arbitrary, capricious and unjust manner and violated the **agreement** between the parties when on February 24, 1978 it dismissed Clerk **M. L. Agee** from the service of the carrier.

2. In view of the foregoing arbitrary, capricious and unjust action of the Carrier, it shall **now** be required to:

(a) Restore Clerk **Agee** to service of the Carrier with all seniority, vacation and other rights unimpaired.

(b) Pay Clerk **Agee** for all **time** lost commencing with February 24, 1978 and continuing until Clerk **Agee** is restored to **service**.

(c) Pay Clerk **Agee** any amount she incurred for medical or surgical expenses for herself or dependents to the extent that such payments could have been paid by Travelers Insurance Company under Group Policy No. GA23000 and in the event of the death of Clerk **Agee** pay her estate the amount of life insurance provided for under said policy. In addition, reimburse her for premium payments she may have made in the purchase of suitable health, welfare and life insurance.

(d) Pay Clerk **Agee** interest at the rate of 10% compounded annually on the anniversary of this claim for amounts due under (b) **above**.

OPINION OF BOARD: **Claimant** had been in Carrier's service about eight years. On February 21, 1978, she was notified to appear for an investigation to be conducted on **February** 23, 1978, to determine her responsibility, if any, for her alleged negligence in the mishandling of an engineer on January 25, 1978, when she allegedly failed to **mark** the engineer up for his job when he reported, resulting in the payment of a penalty time slip to the engineer.

The investigation began, as scheduled, **at 9:00 A.M.**, February 23, 1978, after which it was determined that there was an error as to the date of the alleged occurrence. The investigation was **terminated** and **re-**scheduled for 2:00 **P.M.**, February **23**, 1978, **with a corrected notice to** the claimant changing the date of the alleged incident to **January** 22, 1978. Following the **investigation**, the claimant was dismissed from service on February 24, 1978.

The Organization contends **that** the re-scheduling of the **investigation**, with a corrected notice to claimant changing the date of the alleged incident to January 22, 1978, placed claimant in double jeopardy. The Board does not **find** such contention persuasive. When it was determined that the original notice of charge was in error as to the date of the alleged occurrence, the first investigation was terminated. The second notice was issued with the correct date, and a second investigation was held involving that date. We do not find such procedure **in violation** of the Agreement. The discipline must stand or fall on the basis of the second investigation.

The Board has carefully reviewed the transcript of the second investigation, together with the submissions of the parties, and find that some discipline was warranted. It is clear that the engineer **involved** did report on January 22, 1978, but, for some reason, claimant failed to mark him up. Claimant was reinstated April **25**, 1978. Thus, the discipline imposed amounted to about sixty days suspension. We find, considering the nature of the offense, that such discipline was excessive. A **thirty-**day suspension would have been more appropriate. We will award that the discipline imposed be reduced to a thirty-day suspension, and that claimant be compensated for all time lost in excess of **thirty** days,

The Organization has presented no Agreement support for Parts **(c)** and **(d)** of the claim, **and** they are denied.

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

Award Number 22741
Docket **Number** CL-22777

Page 3

That the Agreement was violated to the extent shown in Opinion.

A W A R D

Claim sustained to the extent **indicated** in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 29th day of February 1980.