

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22969
Docket Number CL-22940

Martin F. **Scheinman**, 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-8811)
that:

1. Carrier acted in an arbitrary, capricious and unjust manner and violated the agreement between the parties when by letter dated November 8, 1978 it suspended Clerk Jessie Thompson from the service of the Carrier for a period of 30 days beginning November 8 through **and** including December 7, 1978.

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

- (a) Restore Clerk Thompson to service of the Carrier with all seniority, vacation and other rights unimpaired.
- (b) Pay Clerk Thompson for all time lost **commencing** with November 8, 1978 and continuing through December 7, 1978.
- (c) Pay Clerk Thompson interest at the rate of **10%** on the amount claimed under (b) above.

OPINION OF BOARD: Claimant, J. Thompson, after investigation, was suspended 30 days for negligence and indifference to duty. Claimant was regularly assigned as Crew Dispatcher (**Galler**) at Springfield Terminal. A part of Claimant's job was filling Conductor vacancies on the Fort Smith Subdivision.

On October 11, 1978, **Claimant** was instructed to call a crew for a work train for the Fort Smith Subdivision. There were no Conductors available to protect this work train. Therefore, Claimant had to call an emergency Conductor from the Brakeman's board to fill the vacancy.

The Organization contends that Claimant is not guilty of negligence or indifference to duty. Rather, it asserts that Claimant merely misinterpreted the rules. The Organization also raises certain procedural

arguments, e.g., that the decision was not rendered within seven days after the **completion** of the investigation and that a fair and impartial investigation was not provided.

We will first address the procedural objections raised by the **Employees**. The record indicates that a decision was rendered within **seven** days as required. It is **undisputed** that the **investigation was** completed on **November 2, 1978**. It is clear **that** the decision was sent to **Claimant** on November 9, 1978 - a period of seven days. In fact, the **Employees** admit **in** its letter of November 16, 1978 (Carrier Exhibit "D") **that** the answer **was postmarked** on November 9th. Therefore, we **must** reject the **Organization's** argument that the decision was untimely.

The **Employees** also argued that a fair and impartial hearing was not provided because the conducting officer did not assess the penalty. This contention **must** be rejected. There is nothing in rules of the Agreement which requires who **must** actually assess the **penalty**. See **Award No. 13383**.

In short, we are convinced that each of the Organization's procedural arguments are without merit.

We will next turn to whether **Claimant** is guilty as charged. A review of the transcript convinces us that Carrier met its burden of establishing that Claimant is guilty of negligence **and** indifference to duty. The investigation clearly **established** that **Claimant** failed to properly administer her duties as a Caller. Claimant was fully aware of **Stoviak's** availability; she also was aware that he was senior to the **man** called. **Her** action on October 11, 1978 was completely inappropriate.

The final question that remains is the appropriate discipline. Claimant has received numerous letters for poor performance of her duties. In addition, Claimant **was** assessed a ten (10) days' suspension for mishandling a Hostler. This Board recently affirmed that **discipline**.
Award No. 22905.

Given the proven offense as well as Claimant's past record, we can see no reason to set aside the discipline imposed. The claim is 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;

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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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD **ADJUSTMENT BOARD**
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1980.