

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23011
Docket Number CL-22928

Rodney E. Dennis, Referee

PARTIES TO DISPUTE: (Brotherhood **of** Railway, Airline and
(Steamship **Clerks, Freight** Handlers,
(**Express** and Station **Employees**
(**Seaboard** Coast Line Railroad Company

STATEMENT OF CLAIM: "Claim of the System **Committee** of the Brotherhood
(u-8765) that :

1. Carrier acted arbitrarily, **capriciously** and in a harsh and discriminatory **manner violating** Rule 38 and other rules of the Agreement (8) when it assessed ten (10) days actual suspension to **Mr. L. D. Ford**, Utility Clerk, Freight Office, Tampa, Florida, following **investigation** conducted at Tampa, Florida, April 24, **1978**.

2. Carrier further violated the Agreement (**s**) when it failed to include with the transcript of the investigation **a** copy of letter of March 23, **1978**, written by Agent **S.O. Rudd, Jr.**, addressed to Claimant L. D. Ford, said letter **being** pertinent to the investigation **in** view of the fact that statement of charges read: "**..You** are charged with unsatisfactory work **performance** in your capacity as **Utility** Clerk at **Tampa** Freight Agency, and **more** specifically failure to comply with Agent **S. O. Rudd, Jr.'s** written instructions to you on March 23, **1978**." The Conducting Officer stated during the investigation that a copy **of** the letter **of** March **23, 1978, from Mr. Rudd** to **Mr. Ford** would be attached to and made a **part** of the Investigation.

3. Carrier further violated the Agreement (8) when it failed to include with the transcript of the investigation, a copy of **Claimant** L. D. Ford's self-audit of April 10, **1978**, which **was** referred to during the investigation. The Investigating Officer stated during the investigation that the above referred to self-audit would be attached to and made **a** part of the investigation.

4. Account the above violations, Carrier shall:

- a. Compensate Claimant for **all** time lost and **other** benefits taken from him as a result of Carrier's action.
- b. Clear from service record of Claimant, any reference to the above stated investigation and reference to discipline assessed."

OPINION OF BOARD: Claimant was directed by letter dated March 23, 1978, to bring his work assignment up to date or be subject to further action by carrier.

Claimant is a utility clerk at carrier's freight office in Tampa, Florida. By letter dated April 18, 1978, claimant was informed that he was charged with unsatisfactory work performance and failure to comply with Agent Rudd's letter of March 23, 1978. The investigation was held on April 24, 1978. As a result of the investigation, claimant was found guilty as charged and was assessed a ten-day actual suspension. The transcript of that hearing has been made a part of this record. The record of this case has been thoroughly reviewed and discussed by this Board. As a result, this Board finds it necessary to issue a sustaining award.

X-1
In cases such as this, it is carrier's burden to prove its charges by credible evidence. It is also necessary in cases where the competence of an employee is questioned for the accuser to demonstrate, by reasonable, measurable standards, that the accused is not performing his assigned duties in a satisfactory manner. In addition, some effort must be put forth by the employer to help the employee involved improve his performance and productivity. Some plan of improvement must be put forth and reasonable goals for improvement set.

X-2
Based on the record of this case, it is the opinion of this Board that carrier has not set forth a reasonable set of goals for claimant to meet, that carrier did not rely on measurable standards in reaching its conclusion that claimant's work performance was unsatisfactory to the point of warranting discipline, and that carrier has fallen short of carrying its burden of demonstrating to this Board that claimant was guilty as charged.

The record reveals that, based on an audit, claimant was seventeen and one-half (17½) hours behind in his job. It also reveals that no reasonable person could expect that claimant could catch up in the ten days allotted him in Mr. Rudd's letter. When Rudd was being questioned, he clearly stated (transcript, page 3): "I think it would be impossible to catch up all 17 hours but I think that a reasonable improvement would have shown good intentions." The question obviously then becomes, did claimant exert a reasonable effort to clean up the backlog during the ten days in question?

Carrier was not persuasive in convincing the Board that claimant did not exert a reasonable effort to catch up his work. Carrier failed to submit the second audit completed on April 11th. This Board thinks that this failure to provide the data, together with the dearth of solid facts to demonstrate that claimant did not try seriously to eliminate the work backlog, are fatal flaws in carrier's case.

Claimant was given a goal to achieve that, by carrier's own testimony, was not achievable. It is inappropriate for carrier to then discipline claimant under such conditions. This Board need not comment on the organization's accusation that carrier was out to "get" claimant or that carrier violated Rule 38C when it failed to supply to the claimant and his representatives the Rudd letter and the April 11 audit as a part of the transcript of the hearing. The Board's comments about the April 11th audit refer to its substantive value in this case, not to possible procedural violations.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1980.