

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23298
Docket Number CL-23205

John J. Mikrut, Jr., Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8957) that:

1. Carrier violated the Clerks' Rules Agreement when it arbitrarily suspended Mrs. A. E. Oestreich from its service for a period of fifteen (15) days following investigation, without giving reasonable consideration to the testimony given and the mitigating circumstances involved.

2. Carrier's action was arbitrary, unjust and unreasonable.

3. Carrier shall now be required to compensate Mrs. Oestreich for all wage losses sustained due to Carrier's arbitrary and unreasonable action.

OPINION OF BOARD: Claimant, a Clerk with seniority date of July 17, 1978, on Master Roster No. 3 Seniority List was employed by Carrier for the purpose of filling temporary and short term vacancies as needed.

Early on the morning of November 27, 1978 (5:09 A.M. or thereabouts), Claimant, who was the least senior employee on Master Roster No. 3, was contacted via telephone by Crew Clerk Schultze, the Boardmarker to fill a PBX vacancy beginning at 7:45 A.M. on that same morning. The record shows that Claimant and another employee, Ms. L. Volner, who was actually contacted before Claimant, refused said assignment and said position was blanked for the remainder of the day by Carrier. As a result of this situation, Claimant was assessed a fifteen (15) day suspension it being charged that she failed in her obligation to protect the PBX vacancy for which she had been called.

Organization's major contention in this dispute is that Claimant was a relatively new employee (approximately 4 months' seniority) and was unaware of Carrier's Rule regarding the protection of the extra assignment. In support of this contention, Organization argues that Claimant was never "advised or given instructions as to the procedures or regulations to be followed as an extra clerk." Organization further argues that upon receiving the Crew Clerk's telephone call on the morning in question, Claimant was led to believe that the PBX assignment was "optional" and could be refused without penalty. Moreover, Organization further maintains that

Claimant's reason for refusing to **perform** the subject **assignment** ("up at least half the **night caring** for her 8 month old daughter who was ill"), was **legitimate and** reasonable grounds for such action.

In **summary** of its basic position, **Organization** contends that **Carrier's** actions in **this dispute** were arbitrary, unjust and unreasonable because, according to **Organization**, **Carrier failed/refused** to consider the **various mitigating circumstances which were operative in this case**.

Carrier's position In this dispute, simply stated, is that **Claimant** failed to protect her **PEX** extra assignment on **November 27, 1978**, and that such **failure is** grounds for **discipline** in accordance with Rule P of the General Rules as well as Rule 17 and **Memorandum Agreement No. 35**. According to **Carrier**, **Claimant knew**, or should have known of the rules concerning an **employee's responsibility in** protecting an **assignment** because, **Carrier** alleges, at the time of her **employment Claimant was** furnished with a copy of all pertinent **Notices** and Rules, and subsequent thereto, **Claimant was informed** both orally and by written **notice from** various of her Supervisors that she was expected to work and fill all vacancies for which she was called.

Further, in support of its position, **Carrier** maintains that **Claimant** failed to fill the **disputed assignment "without any reasonable explanation."** In this regard, **Carrier** contends that In situations such as that involved in **this dispute**, an **employee "has an obligation to work** when called or at least to give a reasonable and **timely explanation for** not doing so" (**Third Division Awards 8512, 10003 and 100997**) According to **Carrier**, however, **Claimant's** refusal herein was neither reasonable nor timely; and thus, given the fact that **Claimant** failed to protect her **assignment** on November 27, 1978, the **discipline which** was assessed was neither "unjust, arbitrary nor capricious" and there has not been a "substantial showing that the **discipline** assessed was excessive due to extenuating circumstances."

Given the extensive record in this otherwise **seemingly** simplistic dispute, as well as the **many** diverse **arguments** which have been proffered by the parties In support of their respective **positions**, there are any **number** of directions which this award could follow. Suffice it to say, however, that after carefully reading and studying all of the relevant evidence and testimony, the **Board** is convinced that certain significant mitigating circumstances were operative at the **time** of this Incident and **Carrier's** failure to recognize same and **Carrier's** apparent failure to accord them any weight whatsoever in assessing **Claimant's** alleged guilt, thus renders **Carrier's** action **unreasonable and** arbitrary and, therefore, **improper**.

Let there be no doubt that **this** Board wholeheartedly supports and endorses the well established proposition that an **employee is** obligated to protect **his/her assignment** and that Carrier, in the exercise of its managerial prerogatives, may discipline an employee for infractions thereof. Innumerable decisions on **this** and all other Divisions have consistently upheld this principle and, because of their pervasiveness, these decisions need not be specified at this time. Be that as it may, however, it is equally well established that this particular managerial prerogative is not without constraint since management's exercise of said prerogative is clearly circumscribed by considerations of reasonableness and fairness.

Throughout their argumentation of this case, the parties have focused considerable emphasis upon the question of whether Claimant knew or should have known of her contractual responsibility to protect her work assignment. Despite the obvious significance which such a determination would bring to the resolution of **this** case, the record is inconclusive in this respect. Regardless of **this** particular determination, however, the record does show that:

(1) Claimant was a new employee whose total seniority with Carrier was approximately only four months;

(2) the Crew Clerk's telephone call to Claimant on the morning of November 27, 1978, easily could have led Claimant to believe that the disputed assignment was "optional";

(3) the Crew Clerk did not apprise Claimant that she was the last person in line of seniority and thus could not refuse such assignment without incurring some form of disciplinary action; and

(4) the Crew Clerk himself was unsure of the specific details regarding an employee's obligation in protecting an assignment. Evidence for the last of the three (3) above stated findings can be found in the Chief Clerk's testimony as follows:

"Q. (Mr. Matthews): Do you know if Mrs. Oestreich protected the PBX job on the date in question?

A. (Mr. Schultze): No she didn't. She declined the job. She didn't want it you know. After I offered it to her she said that she couldn't work it that day.

"Mrs. Oestreich: I **didn't** say that
I said no.

Mr. Matthews: Did you have **someone**
else on the **extra board** that you
might have called after you called
Mrs. **Oestreich** to fill the vacancy?

Mr. Schultze: No she's the **bottom** of
the **extraboard**.

Mr. Matthews: Did you explain this to her
at the time you gave the call?

Mr. Schultze: I don't believe I did.
(**Emphasis** added by Board).

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Mr. Scholbe: Declined the job. I see.
And I understood you to say that when
you called Mrs. Oestreich and offered
her the job and she declined you did
not tell her that she was the last
person on the board?

Mr. Schultze: No I didn't. (**Emphasis**
added by Board).

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Mr. Scholbe: **...Okay, have you ever**
instructed anyone in the time you've
have you ever been instructed
by your to notify the person
called that they were the final person
to be called?

Mr. Schultze: No, there's kind of a
conflict in there **between** the two boards
that we cover. On **like #1, #1** Clerks Board
they don't have to protect the board after
a **certain time. And now** I understand on
#3 that its completely different. But I
didn't know this at the time.

"Mr. Scholbe: You had no way of **knowing** that supposedly you were supposed to inform somebody that they were the last person in **line, did** you?"

Mr. Schultse: No we didn't have set rules in there, well, nothing on paper that I know of anyway. (Emphasis added by Board).

* * * • *

Mr. Matthews: Master #3. All right, what rules do you have pertaining to protecting vacancies on Master #3?

Mr. schultse: Well we call them In **seniority order of course, and now I understand, now this just came up recently, where they have to, where they do have to protect the jobs they are called.** Whereas on Waster #1, after board **marking** time they don't have to." (Emphasis added by Board)

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Given the above analysis, the Board concludes that there were several **significant, mitigating** circumstances which were operative at the time of this incident and which, therefore, should have been considered by Carrier in evaluating Claimant's alleged **guilt.** Furthermore, Carrier's summary disregard for these **mitigating** circumstances clearly indicates a substantial degree of **arbitrariness** and unreasonableness on the part of Carrier in the handling of this matter and such action is deemed to be improper.

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

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That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.

