

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Nuder 23421
Docket Number CL-23288

John B. LaRocco, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and
{ Steamship Clerks, Freight Handlers,
{ Express and Station Employees
{ Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8948)
that:

Carrier violated the Agreement at Washington, D. C., when on April 21, 1978, it unjustly suspended Ms. Z. B. Brice, Executive Clerk, Marketing and Planning Department employee, from service without pay for a period of five days, beginning April 24, and extending through April 28, 1978, for an alleged failure to properly protect her assignment on April 21, 1978.

For this violation, the Carrier shall be required to compensate Ms. Z. B. Brice for all monetary losses sustained during that unjust suspension period.

OPINION OF BOARD: Claimant, an executive clerk, was given a five-day suspension for reporting late to work and failing to protect her assignment. On April 21, 1978, claimant arrived at the Carrier's office at 8:40 a.m. which was ten minutes after her 8:30 a.m. assigned starting time. Later that day, the Carrier disciplined the claimant for her tardiness. The claimant informed her supervisor that she was tardy because the subway she rides had broke down. At the claimant's request, the Carrier held an investigation on May 2, 1978 in accord with Rule C-1 of the applicable agreement. After the investigation, the Carrier declined to revoke the discipline.

Claimant concedes that she was ten minutes late on April 21, 1978, but she contends her tardiness should be excused due to the unavoidable interruption of service on the public transportation she rides to work. At the investigation, the transit authority (by letter) confirmed that a breakdown occurred on the rail line claimant takes to work. The breakdown disrupted service for seventeen minutes. The claimant argues that but for the service interruption she would have timely protected her assignment. The Carrier asserts that the claimant has the ultimate responsibility to report to work on time. While the Carrier admits that claimant was late due to the breakdown in public transportation, it argues that claimant should have left home earlier in case she encountered unanticipated commuter delays. To justify the five-day suspension, the Carrier points to the claimant's poor prior attendance record.

According to Rule C-1, the Carrier may discipline the claimant for cause. In this case, the Carrier has failed to show sufficient cause to assess discipline against the claimant. The claimant could not foresee and had no control over the disruption in public transportation on April 21, 1978. If the trains had been running without delay, claimant would have reported to work on time. The claimant, to a certain extent, must rely on public transportation, and it is unreasonable to hold her accountable for wholly unanticipated delays. Thus, even though claimant was late on April 21, 1978, her tardiness is excused.

The Carrier may consider the claimant's prior attendance record in determining the proper amount of discipline. However, because claimant's failure to protect her assignment is excused, in this instance, the Carrier was precluded from assessing any discipline against the claimant. Rule C-1(f) specifies the proper remedy. The claimant shall be reimbursed to cover wages she lost during the five-day suspension at the rate of pay in effect at the time she served the suspension.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim sustained as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of November 1981.

