

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24926
Docket Number CL-23871

Josef P. Sirefman, 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-9333)
that:

Carrier violated the Agreement at Washington, D. C., when on September 1, 1978, it unjustly suspended Ms. Z. B. Bryce, Executive Clerk, Marketing and Planning Department employee, from service without pay, beginning Tuesday, September 5, 1978, and extending through Monday, September 25, 1978, for an alleged failure to properly protect her assignment on August 24, 1978.

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

OPINION OF BOARD: Claimant A. B. Bryce, an Executive Clerk hired in May, 1972 was given a 15 working day suspension for being 30 minutes late (failure to protect assignment) on August 24, 1978. After a hearing was held on October 17, 1978 the suspension was sustained by management. In a nutshell, Claimant insisted that the 7:42 AM bus broke down that morning and that after some delay the passengers were switched to the next available bus causing her to arrive at work a half-hour late. Claimant's supervisor contacted the bus company which issued the following letter to him:

"Reference is made to our recent telephone conversation in which you requested verification of a mechanical breakdown of one of our buses on August 24, 1978.

As I mentioned to you in a later telephone conversation, none of our records support the alleged breakdown. I even had an opportunity to personally talk with the operator of the bus in question. He stated that he had no problem whatsoever with his bus on the above mentioned date.

While we have no reason to suspect that the operator's statement is untrue, there have been many cases brought to our attention where operators have denied knowledge of incidents that actually happened."

As the route is not explicitly identified, and as the last paragraph suggests that the letter is too vague a basis for disbelieving the Claimant and imposing discipline. In the Board's opinion these contentions are not persuasive.

An examination of the record establishes that in contacting the bus company, the supervisor made quite clear the route and time involved. Thus the reference by the letter writer to personally speaking to the driver refers to the driver who had already been identified, namely, the one who drove the bus Claimant

says broke down while she was a passenger. With respect to the last paragraph of that letter, it should be noted that the driver actually involved on that bus that morning was questioned, and the bus company stated "... we have no reason to suspect that the operator's statement is untrue". It is also instructive that in Third Division Award 23421 Referee LaRocco sustained the same Claimant's contention that a prior tardiness had been due to transportation delay, on the basis that there had been such delay as evidenced by a letter from the transporter. In other words, despite the disclaimer in that last paragraph of the letter in question, transportation companies do receive reports of delays when they occur. Finally, it should be noted that although Claimant had been counselled frequently and was under a contested suspension because of prior lateness and failure to protect her assignment, there is nothing in the record to indicate that she made any attempt to obtain alternative transportation or even to call ahead to her supervisor to advise that there had been a transportation delay.

Claimant's prior time and attendance record is quite poor. Nonetheless, in evaluating the appropriateness of the 15 working day suspension account should be taken that the prior 5 day suspension had been set aside in Award 23421, previously cited. As this 5 day suspension was part of the record considered by the Carrier in arriving at the 15 day suspension in question here, the latter suspension must be modified to reflect that the prior suspension is no longer part of the record before this Board. Therefore, the Board concludes that there was substantial evidence on the record to support the Carrier's decision to discipline Claimant. However, the 15 day suspension should be modified to a 10 working day suspension, which is appropriate given Claimant's cavalier attitude towards protecting her assignment.

This Board is aware that in Third Division Award 24266 the Claimant's discharge was upheld based upon an incident subsequent to the one before us. Such termination does not render the matter before us moot for in evaluating the 15 day suspension subsequent events are beyond our purview.

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 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

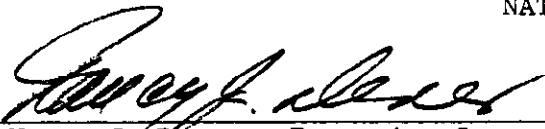
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1984.