

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24951
Docket Number CL-24875

Hyman Cohen, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9665) that:

(1) Carrier violated Clerk-Telegrapher Agreement when, on August 13, 1980, it imposed ninety (90) days' suspension from Carrier's service on Mr. Ronald S. Vaughn, Clerk Caller, Baltimore, Maryland, which action was unreasonable and unjustified, and

(2) As a result of such impropriety, Carrier shall be required to compensate Claimant Ronald S. Vaughn for all wages lost between the suspension period of August 15, 1980, through and including November 15, 1980, and that Mr. Vaughn's service record be cleared of all notings of charges and disciplinary measures in connection therewith.

OPINION OF BOARD: After a formal investigation which was held on July 29, 1980, the Claimant was suspended for ninety (90) days for striking Patricia Street, a female relief clerk on July 22, 1980 in violation of Rule 4 which provides:

"Scuffling, horseplay, practical jokes, and all conduct of a similar nature, while on duty or on company property is prohibited."

On July 22, 1980, as general timekeeper, Mrs. Street went to the Caller's office to seek assistance in order to verify penalty claims submitted by train service personnel. Finding the Chief Caller busy, she approached the Claimant, a Clerk-Caller, and called him by his first name in order to obtain the information. The Claimant, who was working, advised her to "get away" from him. When Mrs. Street told the Claimant that she needed "to know where this man is working", the Claimant warned her "to get away" from him before he would take her across his knee and "spank" her. Mrs. Street replied that he "wouldn't dare", whereupon the Claimant took her arm, put her across his knee and "spanked" her once with his open hand.

The record fails to disclose that Mrs. Street induced, provoked or goaded the Claimant to "spank" her. That she called the Claimant by his first name and refused to "get away" from him, as he advised, cannot reasonably be characterized as instigating the incident in question. The Claimant's "spanking" of Mrs. Street was committed without her consent or acquiescence. Indeed, it should be underscored that in approaching the Claimant, she was carrying out the performance of her duties as general timekeeper.

Although the Claimant's act was not "violent", it was demeaning and humiliating to Mrs. Street. Within the range of conduct prohibited while on duty or on company property under Rule 4, ("scuffling, horseplay, practical jokes, and all conduct of a similar nature"), the act by the Claimant on July 22, 1980 cannot be treated lightly. The Board concludes that the Carrier's assessment of ninety (90) days suspension which was imposed against the Claimant should not be disturbed.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 14th day of August 1984.

