

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24990
Docket Number CL-24989

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9732)
that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Chicago, Illinois, commencing May 13, 1982, when it wrongfully removed Ruth L. Reams from service, and

(b) Claimant Ruth L. Reams shall now be returned to her Tariff Compiler position and be compensated eight (8) hours' pay at the pro rata rate of that position for each work day Claimant is wrongfully withheld from her position, in addition to any other compensation Claimant may have received as a result of such violation.

OPINION OF BOARD: Claimant, with a seniority date of April 25, 1977, on the Carrier's General Manager - Chicago and Topeka Seniority Roster, was, at the time of the occurrence giving rise to the dispute herein, regularly assigned to Position No. 6074 Junior Assistant Tariff Compiler, hours 8:00 A.M. to 5:00 P.M., Monday through Friday, at Carrier's General Office Building, Chicago, Illinois.

On April 21, 1982, Claimant was notified by the Manager-Tariff Bureau:

"Please arrange to report to Conference Room 1131 in the Railway Exchange Building, 80 E. Jackson Boulevard, Chicago, Illinois at 10:00 a.m., Monday, April 26, 1982, with your representative and witness(es), if desired, for formal investigation to develop all facts and place your responsibility, if any, in connection with possible violation of General Rules 2, 14 and 16 of the General Rules for the Guidance of Employees, 1978, Form 2626 Standard, concerning your allegedly making false statements to company officials and supervisors in connection with alleged injury that occurred April 7, 1982, at approximately 2:30 p.m."

Rules 14 and 16 of the General Rules for the Guidance of Employees, referred to in the April 21, 1982, letter, provide:

"14. Employees must obey instructions from the proper authority in matters pertaining to their respective branches of the service. They must not withhold information or fail to give all the facts, regarding irregularities, accidents, personal injuries or rule violations."

"16. Employees must not be careless of the safety of themselves, or others; they must remain alert and attentive and plan their work to avoid injury.

Employees must not be indifferent to duty, insubordinate, dishonest, immoral, quarrelsome or vicious.

Employees must conduct themselves in a manner that will not bring discredit on their fellow employees or subject the company to criticism or loss of good will."

The investigation scheduled for April 26, 1982 was postponed and conducted on April 28, 1982. A copy of the transcript has been made a part of the record. Following the investigation, in which the Carrier found Claimant guilty of violating the above-quoted Rules 14 and 16, Claimant was notified of her removal from service on May 13, 1982.

The investigation was conducted by Trainmaster W. J. Epperson. Claimant was present throughout the investigation, was represented, and testified in her own behalf. Claimant's representative requested the sequestering of witnesses, which request was granted. The representative objected to the presence of P. O'Brien, Assistant General Manager - Pricing and Divisions, at the investigation. The conducting officer stated that Mr. O'Brien would act only as an observer, and the objection was over-ruled. We do not see that the presence of Mr. O'Brien at the investigation was in violation of any rule, or prejudicial to Claimant. In fact, the record shows that Claimant's representative, later in the investigation and before questioning the Claimant, requested that Mr. O'Brien testify, which he did. However, his testimony did not add or detract from the investigation. We find that the investigation was conducted in a fair and impartial manner and that none of Claimant's substantive procedural rights was violated. Substantial evidence was adduced in support of Carrier's conclusion that Claimant was guilty of violating Rules 14 and 16, heretofore quoted.

The record shows that on April 7, 1982, a tariff mailing was loaded on two carts in Room 757, 7th floor of the Railway Exchange Building. The Claimant and Tariff Distributor Mary Holubiak were assigned to handle one cart and Associate Tariff Compiler R. McGill was assigned to handle the other cart. The Claimant contends that after reaching the first floor, Ms. Holubiak, who was pushing from the rear of the cart, "rammed" the cart into her arm, resulting in Claimant sustaining a personal injury to the outside of her left arm above the elbow.

There was conflict in the testimony given at the investigation as between the Claimant and the other two employees, Ms. Holubiak and Mr. McGill, concerning the alleged personal injury to Claimant. The Carrier has pointed out that the testimony of Claimant was conflicting in itself as to just where the alleged personal injury was incurred.

This Board has issued numerous awards holding that it will not weigh evidence, attempt to resolve conflicts therein, or pass upon the credibility of witnesses. Such functions are reserved to the Carrier. We have also held in numerous awards that the Board may not properly reverse the decision of a Carrier simply because of conflicts in testimony.

On the record before us, there is no proper basis for the Board to interfere with the discipline imposed by the Carrier.

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

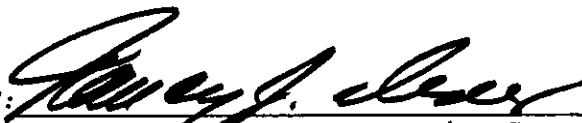
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Sever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.

