

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25238  
Docket Number CL-25297

**Eckehard Muessig, Referee**

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9794**) that:

CLAIM NO. 1:

(a) Carrier violated the provisions of the current Clerks' Agreement at **Los Angeles, California**, when it assessed the personal record of Ms. **M. H. Neisinger** with thirty (**30**) demerits as a result of a formal investigation held **January 28, 1982**, and

(b) The thirty (**30**) demerits assessed shall now be removed from Ms. **Neisinger's** personal record.

CLAIM NO. 2:

(a) Carrier violated the rules of the current Clerks' Agreement at **Los Angeles, California**, when it removed Ms. **M. H. Neisinger** from service as a result of a formal investigation held **February 23, 1982**, and

(b) Ms. **M. H. Neisinger** shall now be returned to Carrier **service** and paid for all loss of wages and benefits commencing on or about **February 23, 1982**.

In accordance with Circular No. 1, issued by the Board October 10, 1934, as amended, the two claims presented have been combined into one submission. Claim No. 1 is for the removal of Carrier imposed discipline for an alleged infraction of Carrier rules on **December 16, 1981**; Claim No. 2 protests the discharge of **M. H. Neisinger**, which resulted from the accumulative effect of the discipline assessed her personal record because of Carrier's decision in Claim No. 1, which caused the total net standing of demerits assessed against her personal record to be sixty, which caused her to be subject to dismissal under the "**Brown System**" of discipline.

OPINION OF BOARD: Two claims (1 and 2) made by the same Claimant and combined herein are before us for decision. The claims are related in that Claim 1 resulted in a finding of guilt for violating a number of the Carrier's rules and, because of this holding, the Carrier assessed thirty demerits. This assessment resulted in another investigation because the Claimant had by then accumulated a total of sixty (**60**) demerits on her record, which subjected her to dismissal under the rules. Subsequent to this investigation, the Claimant was dismissed from Carrier's service.

The key issue before the Board is whether the Claimant failed to perform her assigned billing duties during her tour of duty, beginning on **December** 15, 1981. The Organization argues on a number of substantive and procedural counts, which are a part of the extensive record. It essentially asserts that the Carrier had not met its burden of proof with respect to the charges and that the Claimant was not afforded a fair and impartial trial.

With respect to the conduct of the trial, while the Organization's arguments are understandable, we find that the Carrier's action did not prejudice the Claimant's cause. On the substantive issue, the Board finds that the Carrier has proven its charges and some assessment of demerits was warranted. However, given the nature of the offense and the fact that no major adverse **consequences** to the Carrier's operations resulted from the Claimant's failure to fully perform her duties, we consider the assessment of the maximum number of demerits (30) permitted by the Rule, to be excessive. Accordingly, we find that 20 demerits is more reasonably related to the gravity of the offense. Consequently, the Claimant's record stands at 50 demerits, rather than 60. Therefore, we will award that Claimant be restored to the service with seniority and other rights unimpaired. but without any compensation for time lost while out of the service.

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 **Employes** involved in this dispute are respectively Carrier and **Employes** 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

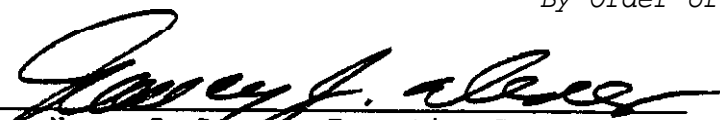
That the discipline was excessive.

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 31st day of January 1985.

