

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25305
Docket Number CL-25061

Marty E. Zusman, Referee

(Brotherhood of Railway, Airline and Steamship Clerks
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9755)
that:

1) Carrier violated the Clerks' Rules Agreement at Minneapolis, Minnesota, when it charged, held investigation and assessed discipline of fifteen (15) days suspension on February 19, 1982 to Employee E. A. Olson.

2) Carrier shall now be required to clear Employee Olson's personal record of all mention of the charges, investigation and assessed discipline and compensate him for all lost earnings caused by the aforementioned suspension.

OPINION OF BOARD: By letter dated January 28, 1982, Claimant Olson received notice to attend a formal investigation to determine his accountability in four alleged failures to carry out his responsibilities as Assistant Chief Clerk. After a proper investigation, the Superintendent notified Claimant on February 19, 1982, that he had been found responsible for a failure to properly respond to the Chief Clerk about a transmission problem; failure to properly handle a carload of paint; failure to fulfill his responsibilities in completing a proper yard check; and in the failure to transmit an interchange report in a proper manner. As a result of these failures Claimant was found guilty as charged and assessed a fifteen (15) day actual suspension.

It is well established in many previous awards that this Board does not presume to substitute its judgment in discipline cases for that of the Carrier when charges are supported (Third Division Awards 21759, 21591, 21094, 20227). The record in the instant case substantiates the Carrier's determination of guilt, as the evidence of Claimant's failure is sufficient and substantial for all four of the charges. Nevertheless, the Board has justifiably reduced a penalty if it was considered excessive in view of the facts before it and the principle of progressive discipline.

The Organization contends that the discipline assessed against the Claimant was unduly harsh considering the employee's past record of service and his near spotless record. In the instant case Claimant had forty-one (41) years of service to Carrier and in that record only two letters of error on file, without any subsequent occupational malfeasance of substance. This Board has long held the position that an employee's service record can play a role in an equitable relationship between an infraction and discipline (Second Division 2066; 9281 and Third Division 23508). This Board is certainly mindful of Carrier's arguments of the serious monetary losses and issues which gave rise to its consideration and assessment of discipline which it holds to be warranted and justified. However, in the instant case, considering the facts, the principle of progressive discipline and Claimant's excellent work record with Carrier this Board rules that Claimant's fifteen (15) days suspension be reduced to eight (8) days and that he be made whole for the other seven (7) days.

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

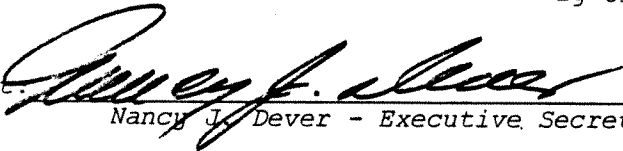
That the discipline was excessive.

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 28th day of February 1985.