

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25572
Docket Number CL-25247

George S. Roukis, Referee

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

PARTIES TO DISPUTE: {

(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9823**)
that:

1. Carrier violated the Clerks' Rules **Agreement** when it arbitrarily disqualified Miss J. J. O'Connell from working any positions in the **Crewboard** office having duties relating to the **marking** of the various boards and/or calling of **employes** in the various Crafts to fill vacancies therein, without giving reasonable consideration to the testimony given and the facts and circumstances involved. /Carrier's File-C)

2. Carrier's action was arbitrary, unjust and unreasonable due to the circumstances involved.

3. Carrier shall now be required to compensate Miss O'Connell for all wage losses sustained and reinstate her to positions in the Crewboard room, due to Carrier's arbitrary and unreasonable action and shall also be required to expunge the investigation transcript from her personal file.

OPINION OF BOARD: An investigation was held on December 9, 1982 to determine Claimant's responsibility, if any, in connection with her allegedly marking up an extra Yardmaster's position for the 1st shift at Carrie Avenue on November 26, 1982, when said position had been abolished. Based on the investigative record, Carrier **concluded** that she was responsible for this action, which necessitated the payment of an eight (8) hour claim for the Yardmaster; and she was permanently disqualified from any position in the Board Room with duties requiring the marking of various boards and the calling of Employees to fill existing vacancies. This disposition was appealed in accordance with the applicable provisions of the Schedule Agreement.

In defense of her **petition**, Claimant contends that Carrier committed several procedural **errors**, including failure to specify clearly disciplinary charges and **failure to comply with the Agreement rules** pertaining to investigations, appeals and further hearing and representations.

Claimant asserts that she filled the **Yardmaster's** position because she was unable to find any additional information that the subsequent cancellation of the initial job abolishment notice was rescinded and avers that her "tomorrow's **board**" indicated the position as a vacancy. She maintains that when she checked the master file, where all original notices are filed to ascertain the situation more accurately, she found only the original **abolishment** notice, dated November 18, 1982, and the cancellation notice, dated November 23, 1982, but no further notice that the November 23, 1982 cancellation was cancelled. She argues that since the available information indicated that the November 18, 1982 position abolishment notice was **cancelled**, she filled **the** position on the evident assumption that the extra **Yardmaster's** position was operative and vacant.

Carrier asserts that the November 26, 1982 investigative notice was clearly written making it possible for Claimant to conduct a thoughtful defense. It disputes Claimant's contentions that it did not comply with the rules governing investigations, hearing and appeals; and avers that Claimant had ample opportunity to refute the purported allegations. It argues that Claimant failed to check the information available to her at the time she committed the **error** which it parenthetically notes was not a one time mistake, and argues that it was a continuation of past negative behavior. It **avers** that while her testimony conflicts with the testimony of Operations Supervisor **Ferrell** Fields and Clerk Judy Bible regarding the order of the abolishment notices, the record unmistakably establishes that she **"alone"** was responsible for calling the Clerk to fill the extra **Yardmaster's** position. In particular, it asserts that the testimony of Clerk Bible that she (Bible) placed the abolishment notices in proper sequence on November 24, 1982 on the clipboard was verified by **Operations** Supervisor Fields who testified that when he returned to work on November 26, 1982, he found the notices in the same chronological sequence.

In our review of this case we concur with Carrier's position on both the procedural and substantive issues raised. We find no evidence that Claimant was disadvantaged by the manner **in** which the investigative notice was written or by the manner the investigation was conducted. There was plainly no denial of contracted-for due process.

Similarly, upon a careful examination of the record testimony, especially the contradictory testimony ensuing between Claimant and Supervisor Fields and Clerk Bible, we find no plausible persuasive basis for sustaining Claimant's defense. To be sure, the cancellation of the original abolishment notice and then the **recancellation** of the position could arguably create confusion, but the sequential order of the **notices on the clip board** and the correlative responsibility of Claimant to review the notices indicates that she was inattentive to her duties. In fact, analysis of the conflicting testimony within the context of consistency, self interest motivation and the Claimant's past employment record would establish this judicial observation. The testimony of Operations Supervisor Fields and Clerk Bible is more credible and under **these** compelling **circumstances**, we are constrained to support Carrier's actions. We would add, however, that permanently disbarring Claimant **from** working any positions in the Crewboard office is too severe. Carrier's prohibition on Claimant's exercise of seniority is removed, subject to the provisions of the Agreement.

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

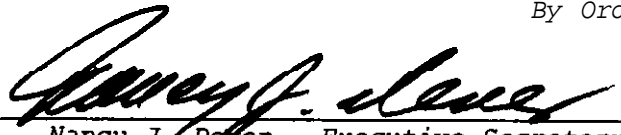
That the discipline was excessive.

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 26th day of July 1985.