

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25637
Docket Number CL-25702

Lamont E. Stallworth, Referee

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

PARTIES TO DISPUTE: (
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-9851) that:

1. Carrier violated Rule 18 of the Clerks' Agreement, when, on March 29, 1982, following investigation, it disciplined Clerk **Don Martsolf**, after failing to sustain charge as set forth in the caption of the Investigation. (Carrier's File **205-5691**).

2. Carrier's action in assessing Mr. **Martsolf's** personal record with thirty (30) days deferred suspension, was arbitrary, harsh and an abuse of discretion.

3. Carrier shall now be required to expunge the discipline assessed and all reference thereto from **Mr. Martsolf's** personal record.

OPINION OF BOARD: Claimant, **D. L. Martsolf**, entered Carrier's service as a messenger at Kansas City, Missouri, on April 21, 1951. At the time pertinent to this dispute he was regularly assigned to position of General Clerk, Job No. 450, at Kansas City, **Missouri**, with assigned hours 7:00 AM to 3:00 PM. Claimant's prior discipline record shows the following:

3-22-64 5 days deferred suspension for failure to comply with instructions concerning disposition of 15 empties.

6-28-72 5 days actual suspension for failure to show car destination codes.

Because of Claimant's alleged failure to properly perform his duties, the Transportation Supervisor held conference discussion with him on the following occasions:

4-3-80 Placing cuts from interchange in wrong rail on April 1, 1980.

7-8-80 Placing cars in a rail not in the proper sequence per physical check on July 7, 1980.

7-14-80 Placing two cuts of cars in a rail not in proper sequence per physical check on July 10, 1980, and placing run-thru train in the 200 Yard (receiving **yard**) instead of the 900 Yard per instructions.

4-22-81 Failed to properly waybill three high-wide loads on April 12, 1981. Failed to properly interchange UP transfer (**BKG** Train) using the wrong date on April 21, 1981.

4-29-81 Failed to properly place Santa Fe cut of 87 cars in Rail 204 on April 17, 1981, cars being out of sequence.

8-10-81 Failed to properly complete cut received from the CNW when failed to waybill 25 cars on August 7, 1981.

9-11-81 Failed to properly interchange UP (**BOP**) cut causing delay to cars on September 11, 1981.

10-29-81 While interchanging a VP cut, failed to properly waybill two engines using wrong numbers as well as improperly billing same.

On March 12, 1982, Claimant was allegedly responsible for failure to properly waybill car LN 96548 received from SSW Railroad by making a switch bill instead of a stop-over bill with Topeka, **Kansas**, as the final destination.

By letter dated March 17, 1982, Claimant was notified as follows to report for formal investigation to develop the facts and place the responsibility in connection with this incident:

"Report to the Assistant Superintendent's Office, 10:00 A.M. on Friday, March 19, 1982, for formal investigation to develop the facts and place your individual responsibility, if any, in connection with the alleged charge that you failed to properly perform your duties while working as General Clerk **TE** (Key punch Operator), Job No. 450, 7:00 A.M. to 3:00 P.M., on March 12, 1982, when you failed to properly waybill car LN 96548 from the SSW Railroad received on March 12, 1982, at **11:58** A.M. in interchange, and a review of your work record.

You may bring any witnesses desired by you in line with your applicable work Agreement.'

The investigation was conducted on March 24, 1982. The Claimant was found guilty as charged. By notice dated March 29, 1982, Carrier assessed thirty days deferred suspension **"...in** connection with your failure to properly waybill car LN 96548 received from the SSW Railroad on March 12, **1982..."**.

The Organization did not **agree** with **Carrier's** action in this matter and by letter dated April 19, 1982, requested that the thirty days deferred suspension be expunged from Claimant's personal record file. The Superintendent declined the Division Chairman's request by letter dated April 27, 1982.

When this request was appealed to Carrier's General Manager by letter dated May 26, 1982, the Organization's position was that Carrier had violated Discipline Rule 18 of the Agreement "and related rules" when it (a) failed to give Claimant a fair and impartial investigation, (b) failed to advise Claimant in writing of the precise **charge** against him and (c) that Claimant was tried on two different offenses and disciplined on Safety Rules which he had not been charged with violating. The General **Manager** declined that appeal by letter dated June 8, 1982.

Organization made another request which was discussed in conference at Kansas City on August 11, 1982, at which time Carrier was not agreeable to removing the assessment of thirty days deferred suspension,

The request was appealed by Organization to Carrier's Director of Labor Relations by letter dated November 12, 1982. The General Chairman's position in that letter was the same as that expressed in the appeal to Carrier's General Manager. The Office of Director of Labor Relations declined the Brotherhood's request by letter dated December 9, 1982, which read as follows:

"Please refer to your letter of November 12, 1982, file I-2057 in which you appeal request that discipline of 30 days deferred suspension assessed the personal record of Clerk Don Martsolf on March 29, 1982, be removed from that record.

The transcript of an investigation conducted on March 24, 1982, shows that while employed as a clerk at Kansas City, Missouri Clerk Martsolf improperly billed Car LN 96548 by **making** a switch bill instead of a stop-off bill with Topeka, Kansas as the final destination. It also developed that all of the proper markings as well as final destination were properly recorded on the bill, which would enable Clerk Martsolf to properly ~~bill~~ this car.

While Clerk Martsolf never did admit the careless performance of his duties, he did allege the '**ZTS**' number (zone, track and spot) had been added later. He also alleged a lack of communication between him and the supervisor, none of which provides any excuse for the errors and careless performance of work by Clerk Martsolf. The record also shows that it has been necessary to counsel Clerk Martsolf on at least seven other occasions concerning his careless performance of duties."

This dispute has been handled in accordance with the procedural requirement of current Agreements between the parties up to and including the highest Officer designated for that purpose, discussed extensively in conference and upon final denial is properly before the Board.

Upon a careful consideration of the record in its entirety, the Board concludes that Claimant was afforded a fair and impartial investigatory hearing. The Board further concludes that the charges made against Claimant were clear and precise. The Board also concludes that there is substantial evidence on the record to support the disciplinary action imposed by Carrier, particularly in view of Claimant's previous record.

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 G. Dever - Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1985,

