NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 26035

THIRD DIVISION

Docket Number MS-25528

James R. Cox, Referee

PARTIES TO DISPUTE: (Anne E. Oestreich
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(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM:

"1. This carrier violated my Constitutional rights of the United States of America by denying a witness to testify with regard to the Computer System at Terminal Railroad Association of St. Louis, Crewboard Office according to their letter dated November 29, 1982, a copy of which is herewith attached, and which reads in part:

> ..."Arrange to attend this investigation. You are entitled to representation and witnesses, if you so desire, as provided in your agreement".

2. That the employee and carrier involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved on June 21, 1934.

3. That Carrier was advised in advance of the expert testimony of a computer specialist-analyst-technician.

4. That carrier failed beyond a reasonable doubt to determine if any Safety Rules, General Notice, General Rules, Accident and Personal Injuries and General Regulations issued January 10, 1980 were violated in connection with this matter in dispute.

5. That carrier stated during this investigation and dispute of Deeember 8, 1982, that carrier would not let an expert computer-specialist-analyst-technician testify since he was not on duty at the time of the alleged incident and had no knowledge of the occurence of the incident except hearsay. Two employees of carrier one of which was on vacation at the time of the alleged computer error and the other which was the first shift supervisor were allowed to testify at my investigation and they were not on duty at the time of the alleged incident and had no knowledge of the occurrence of the incident except hearsay, as previously stated by the said carrier.

6. That carrier did not comply with Rule 23 of the present Agreement between the B.R.A.C., and the T.R.R.A. dated March 1, 1973, which reads in part that an employee charged with an offense (this word was never precisely defined with relationship to the investigation at hand) shall be furnished with a letter stating the precise charge at the time that the charge is made.

That the alleged charge was not precise, lacked merit and was discriminating to said employee in that this investigation was a total form of unjust harassment against the said employee involved.

7. That carrier had pre-determined that said employee was at fault and totally disregarded and ignored the transcript in that carrier violated the employee's Constitutional Rights, Rule 23 and Rule 31 of the Agreement between B.R.A.C. and T.R.R.A., in that this said employee has been harassed and discriminated on numerous occasions and all without due merit.

8. That carrier had as a witness, the first shift supervisor, Mr. Dennis Siebenberger, and he stated that he was very familiar with the operations of the computer machinery in the crewboard room, yet he himself pointed out that he is not a computer expert, hasn't taken any computer courses and that his knowledge of the alleged incident is hearsay in that he was not on duty the night of the alleged incident. Mr. Siebenberger even stated at the investigation that he is "not a computer expert". And also stated that he couldn't tell when the machine made errors or not. He further testified and advised that he could not ascertain whether the error was the fault of the computer or the fault of the clerk. His testimony therefore should not have been allowed into the transcript in that it was only hearsay as the carrier previously pointed out to the said employee involved with regard to her expert witness testifying.

9. That said carrier failed to carry out its written instructions regarding employees laying off as carrier by and through its own employees had specific instructions outlined in the crewboard room in a book entitled instructions that were issued by Mr. F. Fields and Mr. R. Finley. It was quite obvious that said instructions were not carried out properly by the clerk taking the initial lay-off. This is another example of unjust treatment and harassment on the part of the employee involved in this incident. Carrier, by and through its own agents knew of these instructions, yet totally ignored these instructions it had written and signed, yet it chose to penalize ONLY the said employee involved in this dispute.

10. Carrier, by and through its own conducting officer admitted into the transcript that he did not know anything about computers, so how could he determine and conduct an investigation and know if any errors did occur in this matter or not, and then give out the consequences to the employee involved.

11. Carrier refused to acknolwedge a known error that was stated in the transcript when in fact carrier was aware of the incident, but again, gave unjust treatment and harassment to the employee involved in this dispute. Again, ONLY the said employee involved in this dispute was penalized and harassed and dicriminated once again, while other obvious and known errors were ignored and set aside by carrier.

12. Carrier, by and through Mr. Fields, admitted into the transcript that he was not a "programmer", and also admitted that there were "bugs" in the crewboard computer system that were still not out and even testified at the investigation that there was still garbage in the programs.

13. Employee had requested to her representative and to carrier to have Mr. J. Stanley testify with regard to the computer system in the crewboard room, but was advised the day of the hearing that he was out of town, and then too, he was not on duty at the time of the alleged incident and had no knowledge of the occurrence of the incident except hearsay. Also, Mr. J. Stanley was presumed to be the programmer for the crewboard room, when in true accuracy and reality, and with carrier's knowledge, he is TRRA Communication's Manager. At no time was it ever mentioned or documented tht Mr. Stanley was the computer expert for the carrier. The programs and data software were all drawn up and programmed by a computer expert with an east coast railroad, hired by the TRRA to set up the entire computer center in the crewboard room. He was contracted by carrier to perform all functions relative to the computer system at the crewboard room. Mr. Stanley and Mr. Fields assisted in the proper language to be used for the TRRA and assisted in the set-up of the system with the direction of this outside employer. In addition, thereare two known computer experts on the property of the TRRA and their titles so indicate, but they are not involved with the computer system other than the processing of the payroll system.

14. Carrier stated in the transcript that the machine is capable of making an error, and that documentation submitted to the carrier proved that the machine does error, yet carrier continued to harass, harm, injury, prejudice and discriminate against said employee involved in this incident for a computer ralated error, and yet it was never proven as to how, who, or what caused the error since there were so many conflicting statements, allegations and hearsay remarks, that the truth was never brought to light.

15. During a conference discussion, Carrier presented a letter to Mr. T. Taggart where it showed that said employee involved in this incident accepted responsibility for a mistake and/or error and that the said employee was assessed a deferred suspension. This remark, statement, was without due justice and without true merit within the meaning of the scope of this investigation, and all to the defamation and detriment of employee's good working character and work record. Employee should have received communication from the carrier with regard to this conference since her work record was going to be presented and it is illegal to review employee records without the written consent and prior authority of said employee. *This was in violation of the Privacy Code and Freedom of Information Act. Carrier, by and through its employees had no authority to carry on a discussion that was totally out of line

*note: Since carrier was going to have a discussion with Mr. Taggart, said employee should have been present to either ascertain (sic) the truth spoken, and/or have an attorney present, all in accordance with the Privacy Act and Freedom of Information Act

in full force and effect. Secret discussions about an employee's record must also be sent to the employee.

with regard to the incident involved in this investigation, as the statement made during that private discussion caused damage and prejudiced the facts as to the incident in question. The utterance and/or written publication/communication of slanderous words tending to injury and damage the reputation of said employee was done with the intent and purpose of destroying said employee's good reputation, and the containing of this utterance of such illegal statements were totally out of line with the present issue of said employee's alleged error. Carrier wanted to bring up a prior issue to further damage said employees and this was another proof of carrier's discriminatory actions against said employee. Said employee had no defense in this discussion, and was without any prior knowledge that said discussion was taking place. Therefore, the making of such a statement during a private discussion of said employee's personal file was in this particular incident so as to favor employer/carrier and against said employee, particularly when influenced by said employees of carrier rather than on individual merit. Carrier, by and through its own employees in the making of any statements were not on duty at the time of the alleged incident, had no knowledge of the occurrence of the incident except hearsay. Therefore, how did carrier arrive at its directed statements, when in fact, all that said carrier had was hearsay. Said employee did not have the power of making any type of rubtle as provided under the Constitution of the United States of America. Carrier, by and through its own employees should have refrained from making any statements without prior consent of said employee and those statements that it did make were prejudicial and not relevant to the issue at hand. This was all done in direction violation of EEOC codes, and those federal, state and railroad employment rules and regulations dealing with making remarks, statements that are injurious to employee's character and good reputation. It was apparent that carrier's remarks, statements and discussions were intended for the purpose of inplanting a prejudice in the mind of those involved in this incident and in the mind of Mr. Taggart so as to be bias by hasty, incorrect, irrelevant statements as to injury, harass, damage, intimidate said employee by an act, statement all done with malicious and prejudice to said employee's cause of action against said carrier.

16. Carrier's statements and/or remarks during the discussions which was in no way connected to the current issue at hand were injust and all prejudicial in that it was the carrier's own opinion, judgment, and more often unfavorable remarks without proof or competent evidence, but it appeared to be based on what seemed to be valid only to carrier's own mind and a bias against said employee to harm and damage said employee's name, character, and excellent work record, all done to said employee by the unreasonable actions, remarks, statements and/or pre-judgments and statements against said employee. Carrier continued to set up said employee by interjecting statements that were not in the area of this incident.

17. Carrier, by and through its own employees tried to implicate said employee in a wrongdoing, when in fact, carrier forced said employee to sign such suspension by inducing fear in said employee, and therefore, now

giving to said records, incriminating evidence against said employee. This is just another example of carrier's discriminatory acts upon said employee.

18. Why is carrier trying to constantly single out this said employee? When it knows and is fully aware of the wrongful actions of others, and carrier is and has full knowledge of these wrongful acts and said employee has such copies all to carrier's knowledge, yet carrier seems to 'pick' upon certain individuals, and then continue to harass, discriminate, injury and implicate said employee for actions beyond the reasonable scope of truth and justice for all - all according to the rights of the Constitution of the United States of America and its Amendments thereto. Yet, carrier seems to only to penalize a few employees in the crewboard room, and this is a true and accurate statement and of which the carrier is fully aware of.

19. In reviewing and checking out other Awards with regard to discipline assessed by a carrier, said employee found no award comparable to this incident in question with reference to computer being used on the job assignment. Therefore, carrier totally ignored the testimony and facts at issue in this investigation by and through its own statements and remark, by continually stating that 'since he was not on duty at the time of the alleged incident and had no knowledge of the occurrence of the incident except hearsay, how could carrier render discipline in this matter with regard to the above herein statement made by carrier and its own conducting officer. Carrier was certainly not arbitrary and capricious in its decision of discipline on said employee because in the transcript carrier is somewhat confused as to the computer system in the crewboard room, does not know of the instruction book available to employees in the crewboard room, inconsistent, lacking harmony between the element at hand, self-contradictory, not consistent in conduct or principles, erratic, and acting at variance without sufficient deliberation or thought to the total picture of this alleged incident'".

OPINION OF BOARD: Claimant, who was a Crew Clerk, was suspended for 15 days in December, 1982, for failure to properly fill a Switchman's vacancy for an 8:00 A.M. start in the Madison District, November 29, 1982.

Switchman Vogeler had called in the evening before and notified the Crew Clerk then on duty, that he was laying off November 29th. That Clerk made a layoff entry which was left on the layoff board for Claimant, the only Crew Clerk working third shift.

During the course of her shift which commenced November 28, 1982, at 11:00 P.M., Claimant, the evidence established, recorded that Switchman Vogeler was to be laid off on the daily log she maintained. That log reflected that his layoff had been punched into the computer. Procedure requires that, after a layoff is entered into the computer, the log entry is initialed. The log sheet shows that Claimant initialed that she had entered the layoffs into the computer, with her initials behind the parties (including Vogeler) laying off. The computer printout, however, did not reflect any change in Vogeler's status, showing him to be scheduled to work. The computer printout shows Vogeler scheduled to work. All names except Vogeler listed on the log as having been entered were shown as being on layoff by the printout.

Claimant contends that a combination of numbers under certain conditions could void an entry previously made in the computer. She insists she made the proper computer entry.

Claimant was the only Crew Clerk on third shift.

There is no evidence that any other Clerk made entries into the computer after the start of Claimant's shift. She acknowledged that she prints a "program page 99 and its shows up known vacancies if they are logically put into the computer". She testified that her procedure is to enter the vacancies from the layoff slips on a "one by one basis and then initial following the entry". After she makes her entries she is to manually phone individuals from the Extra Board to fill existing vacancies two hours before the assignment.

The evidence clearly established that Claimant did not make any effort to fill the aforementioned Switchman vacancy and did not check the printout against the logs. She did not detect the fact that the vacancy did not show on the printout even though, on the evening in question, there were only a limited number of vacancies. Claimant stated that she begins to call for vacancies for replacements about 4:00 A.M. based upon the Page 99 printout.

Claimant made no effort to vertify the correctness of the data despite the fact that she had difficulty with the Extra Board for both Switchman and Janitors that same night. She also stated that she was upset with the prior shift Crew Clerk's handling of the layoff. Claimant testified that her initial printout took place between 2:00 and 3:00 A.M. She conceded that she never double checks the printouts against the vacancy list of the log. There was proper cause for the suspension.

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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 11th day of June 1986.