

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10087) that:

1. Carrier violated the effective Agreement when, following an investigation held March 20, 1985, it determined Ms. Erma Shadrick guilty of the charge placed against her and imposed discipline in the form of sixty (60) demerits against her record;

2. Carrier shall now rescind the discipline assessed and expunge from her personal record any and all reference therein relating to the instant dispute."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

By letter dated June 29, 1984, Claimant was notified to report for investigation in connection with allegedly "false statements" made to two Supervisors with regard to Claimant's absence from assignment on June 2, 1984. The investigation was postponed by mutual consent and held on March 20, 1985. Following the investigation, Claimant was assessed sixty (60) demerits.

Claimant, who has a seniority date of May 27, 1969, reported to work as scheduled on Position GT-1243-R at 8:00 AM on June 2, 1984. At approximately 10:00 AM, Claimant received a telephone call from her immediate Supervisor informing her of an earlier telephone conversation he had with Claimant's

sister. According to the Supervisor, Claimant's sister told him that she and her two children had been injured in an automobile accident and needed Claimant's assistance. The Supervisor permitted Claimant to leave her assignment and assist her sister and nieces.

At approximately 2:30 PM that afternoon, Claimant telephoned the Supervisor to advise him of the details of the accident. While there are some minor discrepancies in the testimony, essentially the parties agree that Claimant told her Supervisor that an accident had occurred at 5th and Clark Road, which is in the city limits, of Gary, Indiana. Claimant stated that the car in which her sister and nieces were driving was a total loss, and that they had received medical treatment at Gary Methodist Hospital.

On Wednesday, June 6, 1984, the Carrier's Supervisor of Transportation Clerical Forces requested that Claimant furnish documentation of the accident, either in the form of a police report or a hospital emergency treatment report. The Supervisor acknowledged that he was somewhat suspicious of the veracity of the alleged "emergency" because Claimant had failed to report for service on the two Saturdays prior to June 2, 1984.

On Monday, June 11, 1984, Claimant presented the Supervisor of Transportation Clerical Forces with an accident report. The Supervisor of Transportation testified that he gave it only a cursory glance, thinking that he would review it in more detail later. However, Claimant immediately took the report back and refused to allow him to make a copy, stating, according to him, that "it cost her sister \$2.00 and I could get my own."

The Supervisor testified that he later attempted to obtain a report from the Gary Police or County Sheriff's Department but was informed that there was no record of any such report on file. The Gary Methodist Hospital was also contacted, but the hospital authorities stated that such information was unavailable except to the family involved.

Claimant, at the Hearing testified that she did not leave a copy of the accident report because "it didn't make any sense to me" and because my sister called me, it was her accident, it was not mine." Claimant stated that she returned the report to her sister and when she was informed of a pending Investigation, asked her sister for the report again but was told it had been sent to the insurance company. Claimant testified that she then asked the Gary Police Department for a copy of the report and was told there was no such report on file. In addition, Claimant stated, her sister had since moved to the State of Maryland and could not return to Gary to assist her in obtaining the report.

The Carrier contends that the testimony and evidence adduced at the Hearing clearly established Claimant's responsibility for making false statements to her supervisors with regard to her absence on Saturday, June 2, 1984. Dishonesty is a grave offense which cannot be condoned, Carrier insists, because it is a fundamental part of the moral and ethical standards expected of all its employees. Furthermore, Carrier maintains that the degree of discipline assessed was commensurate with the gravity of the offense and her prior work record.

The Organization on the other hand, contends that Carrier did not sustain its burden of proving that Claimant was guilty of the charges of which she stands accused. To the Organization, Claimant was permitted to leave the workplace because of an emergency and later provided the substantiation requested. The inability or failure of Claimant's Supervisor to scrutinize the police report proffered by Claimant is not the fault of the Claimant, the Organization submits. She was instructed to document the incident of June 2, 1984, and she did so. The imposition of discipline in this case was improper and unwarranted, in the Organization's view.

The Board has carefully reviewed the transcript of the proceedings and finds no basis upon which to substitute its judgment for that of the Carrier's in terms of the discipline imposed. Carrier clearly has the right to insist that employees provide verification of an absence which occurs under circumstances such as in this case. We agree that Claimant's refusal to permit Carrier to copy the alleged police report or make reasonable inspection thereof, coupled with the letter from the Gary Police Department in response to Carrier's request, indicating that no such police report was ever filed, suggest that Claimant either was unable or unwilling to substantiate the circumstances surrounding the alleged accident on June 2, 1984. We note, too, that other forms of verification, such as a hospital emergency room report, or insurance records, were never provided by the Claimant during the handling of this dispute on the property or at the Investigation. Absent any evidence which would corroborate Claimant's story, and given the implausible nature of her testimony at Hearing, we can only conclude that Claimant's predicament is of her own making, and therefore, we will rule to deny the Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1988.