

The Third Division consisted of the regular members and in addition Referee Paul C. Carter when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10239) that:

CLAIM NO. 1:

(a) Carrier violated the provisions of the current Clerks' Agreement at Los Angeles, California on/or about May 1, 1987, when it wrongfully assessed the personal record of Ms. Jan Y. Shabazz with thirty (30) demerits, and

(b) The Carrier shall now remove the thirty (30) demerits and any reference to the formal investigation held on April 15, 1987, from the personal record file of Ms. Jan. Y. Shabazz, as a result of such violation of Agreement rules.

CLAIM NO. 2

(a) Carrier violated the provisions of the current Clerks' Agreement at Los Angeles, California, when it removed Ms. Jan Y. Shabazz from service as a result of a formal investigation held on May 28, 1987, and

(b) Ms. Jan Y. Shabazz shall now be returned to Carrier service and paid for all loss of wages and benefits commencing on or about May 28, 1987, as a result of such violation of Agreement rules."

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 employes involved in this dispute are respectively carrier and employes 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.

The Docket covers two Claims involving the same Claimant that were handled separately on the property and combined in one Submission to the Board, resulting in a rather voluminous Docket.

Claim No. 1 involves the assessment of thirty demerits against the record of Claimant following an Investigation conducted on April 15, 1987, in which Claimant was found in violation of Rules 2, 14, 15, 16, 17, 35 and 37 of Carrier's General Rules for the Guidance of Employees, Form 2626 Std., in the performance of her work on Position 9470/6163 on March 16, 1987.

A copy of the transcript of the Investigation conducted on April 15, 1987, has been made a part of the record. We find that the Investigation was properly conducted and that none of Claimant's Agreement rights was violated. The charge of March 26, 1987, was sufficiently precise to enable the Claimant and her representative to prepare a defense. It met the requirements of the Agreement. Rules 2, 14, 15, 16, 17, 35 and 37 of Carrier's General Rules for the Guidance of Employees, cited in the letter of charge of March 26, 1987, and in Notice of Discipline of May 1, 1987, are set forth in the record before the Board and will not be repeated here.

We find that substantial evidence was adduced in the Investigation of April 15, 1987, in support of the charges against Claimant. The discipline imposed of thirty demerits was not arbitrary, capricious or in bad faith. Claimant's prior discipline record was far from satisfactory, and could properly be considered in arriving at the discipline to be imposed for a proven offense. Claim No. 1 will be denied.

Claim No. 2 involves the dismissal of Claimant from service following an Investigation conducted on May 28, 1987, on charge of alleged accumulation of excessive demerits as of May 4, 1987. A copy of the transcript of the Investigation of May 28, 1987, has been made a part of the record. The Investigation was properly conducted and none of Claimant's Agreement rights was violated. The Rules cited as having been violated are set forth in the record and will not be repeated here, except that part of Rule 31(H) reading:

"A balance of sixty demerits subjects an employee to dismissal."

Claimant was dismissed from service by letter dated May 28, 1987. The record shows that at the time of the Investigation of May 28, 1987, Claimant had sixty or more demerits outstanding counting the 30 demerits assessed and discussed under Claim No. 1. Demerits on appeal may properly be considered in cases of excessive demerits (Third Division Award 26465).

The Brown System of Discipline has been in effect on the Carrier since 1923. (Second Division Awards 1820, 6362; Third Division Award 26465).

Carrier's action in dismissing Claimant from service for accumulating excessive demerits was not arbitrary, capricious or in bad faith. Claim No. 2 will be denied.

Form 1
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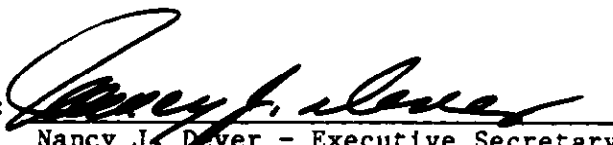
Award No. 27785
Docket No. CL-28308
89-3-88-3-74

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.