

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10371) that:

(CARRIER'S FILE NO. TCU-D-2972/TCU FILE NO. 393-E8-558-D)

1. Carrier acted in an arbitrary, capricious and unjust manner when it assessed Ticket Agent Betty Barnes a thirty (30) day suspension based on the results of an investigation held on October 18, 1988.
2. Carrier shall now be required to expunge said discipline and cleanse Claimant's record of all reference to this matter.
3. Carrier shall be immediately required to return Claimant to work, and compensate her for all time lost."

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 were given due notice of hearing thereon.

Claimant was assessed a thirty (30) day suspension for conducting herself in a discourteous and unprofessional manner toward a passenger. At her Hearing, the passenger testified that he had arrived at the station at 3:35 A.M. with four other passengers to catch a train scheduled to depart at 4:35 A.M. When he attempted to purchase tickets, Claimant told him to have a seat because she was in the middle of some paperwork. The passenger approached

Claimant again at 4:00 A.M., and was again told to have a seat. As the train was arriving at 4:15 A.M., the passenger again went to the ticket counter. This time, Claimant told him that he needed to have reservations. She handed him a telephone through the baggage chute. According to the passenger, Claimant was discourteous at this time and he was required to crouch down to use the phone. Claimant finally issued the tickets at 4:20 A.M. Claimant, for her part, testified that she was occupied preparing train orders at the time the passenger first arrived. She further denied that she was rude or discourteous.

The Organization has objected to the fact that the Carrier refused to call as a witness a conductor who was present in the station. Although the record discloses that the passenger spoke to the conductor, there is no evidence that he might have seen or heard any of the conversations between the passenger and Claimant. Under the circumstances, therefore, we conclude that he was not a witness to the alleged conduct and the Carrier was under no obligation to call him.

There is substantial evidence in the record to support the Carrier's conclusion that Claimant was discourteous toward the passenger and behaved in an unprofessional manner. The discipline assessed in this case was neither arbitrary nor excessive. In reaching this conclusion, we have not considered the issuance of "counseling letters" as prior discipline because counseling is not discipline.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:   
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of August 1990.