

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

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10390) that:

CLAIM NO. 1:

(a) Carrier violated the provisions of the current Clerks' Agreement at Kansas City, Kansas, on July 28, 1988, when it wrongfully assessed the personal record of Ms. C. M. Reid with twenty (20) demerits; and

(b) The Carrier shall now remove the twenty (20) demerits and any reference to the formal investigation held on July 28, 1988, from the personal record file of Ms. C. M. Reid, as a result of such violation of Agreement rules.

CLAIM NO. 2:

(a) Carrier violated the provisions of the current Clerks' Agreement at Kansas City, Kansas, on August 5, 1988, when it wrongfully assessed the personal record of Ms. C. M. Reid with thirty (30) demerits; and

(b) The Carrier shall now remove the thirty (30) demerits and any reference to the formal investigation held on August 5, 1988, from the personal record of Ms. C. M. Reid, as a result of such violation of Agreement rules.

CLAIM NO. 3:

(a) Carrier violated the rules of the current Clerks' Agreement at Kansas City, Kansas, when it removed Ms. C. M. Reid from service as a result of a formal investigation held on August 5, 1988; and

(b) Ms. C. M. Reid shall now be returned to Carrier service and paid for all loss of wages and benefits commencing on or about August 5, 1988, as a result of such violation of Agreement rules.

In accordance with Circular No. 1 of October 10, 1934, as amended, which was issued by the Board, the claims presented have been combined into one submission. Claim Nos. 1 and 2 are for the removal of Carrier's imposed discipline arising from alleged absence from duty as a result of the investigations on July 28, and August 5, 1988; Claim No. 3 protests the discharge of Ms. C. M. Reid on August 5, 1988."

FINDINGS:

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

The carrier or carriers and the employee 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.

This Docket concerns three separate actions of discipline involving the same Claimant. These three actions were taken separately during the on-property handling of these matters and have been combined into one presentation to this Board. This single Award will examine and dispose of all three actions.

The first action involves the assessment of twenty (20) demerits against Claimant's record. This assessment was the decision following a Hearing which was held on July 28, 1988, at which the Claimant was found to be in violation of Rule 1004, Safety and General Rules for All Employees in that she absented herself from her assignment without authority between 2:37 A.M. and 3:33 A.M. on July 3, 1988.

The second action involves the assessment of thirty (30) demerits against Claimant's record. This assessment was the decision of a Hearing which was held on August 5, 1988, at which the Claimant was found to be in violation of Rules A, 1004 and 1007, Safety and General Rules for All Employees in that she, without authority, absented herself from Position 6018 on July 28, 1988.

The third action involves the removal of the Claimant from service. This assessment was the decision of a Hearing which was held on August 5, 1988, at which the Claimant was found to be in violation of Rule 1028(h), Safety and General Rules for All Employees in that she had accumulated an excessive number of demerits.

Copies of the separate transcripts of Hearings held in connection with these three actions have been made a part of the record in this Docket. We have examined each of the Hearing records and conclude that each was conducted in a proper manner and that all of the due process rights to which the Claimant is entitled under the provisions of the negotiated Rules Agreement have been honored.

There is in effect on this property Rule 1028 which reads, in pertinent part, as follows:

"1028. Brown System of Discipline: The Brown System of Discipline by Record is in effect. This system provides for (subject to the applicable investigation rules in collective bargaining agreements) dismissal, suspension from duty without pay for specified periods, as well as certain merits and demerits to be recorded on an employees record as follows:

* * * *

- (h) Employee's records will be balanced at least once each year, and more often when necessary, to keep record up to date in the matter of merits and demerits. A balance of 60 demerits subjects an employee to dismissal."

An examination of the records in this Docket reveals that prior to the initiation of actions No. 1 and No. 2, Claimant's record contained a total of fifty (50) demerits. It is apparent, therefore, that if this Board supports the assessment of demerits in either action No. 1 or action No. 2, supra, the Claimant will be in excess of the allowed balance of demerits as set forth in Rule 1028(h).

The Board has first examined the Hearing record of the action which resulted in the greater number of demerits, i.e., action No. 2. We find that substantial evidence was adduced at the Hearing which was held on August 5, 1988, in support of the charge of violation of Rules A, 1004 and 1007 concerning Claimant's failure to report for work at 11:00 P.M. on July 28, 1988. The imposition of thirty (30) demerits for this proven violation was not arbitrary or in bad faith. This was not the first instance of discipline for failure to protect an assignment. Carrier was entirely within its rights in considering these prior assessments of demerits when arriving at the decision to assess thirty (30) demerits in this instance. The appeal from action No. 2 is, therefore, denied.

The denial of the appeal in connection with action No. 2 causes the assessment of demerits in action No. 1 to become moot. Therefore, we offer no further opinion on that action.

The Hearing in connection with action No. 3 was properly conducted and is conclusive. The provisions of Rule 1028(h) are clear and concise. The Claimant had more than sixty (60) demerits outstanding against her record. Carrier's action in terminating the Claimant was not an arbitrary or capricious act. The propriety and validity of the Brown System of Discipline has been recognized and upheld by this Board on many occasions. We uphold it in this case. The appeal in connection with action No. 3 is also denied.

Form 1
Page 4

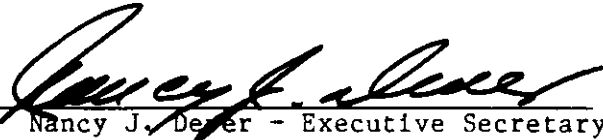
Award No. 28553
Docket No. CL-28997
90-3-89-3-431

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Decker - Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1900