

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

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

STATEMENT OF CLAIM: "(Carrier's File No. TCU-D-3145/TCU File No. 393-C9-045-S)

Claim of the System Committee of the Brotherhood  
(GL-10473) that:

1. The Carrier acted in arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement, when by notice of June 13, 1989 it assessed discipline five (5) days' suspension held in abeyance for six (6) months against Claimant, Ms. Lisa Mitchell.

2. The Carrier shall, if she is ever required to serve the suspension, be required to reinstate Claimant to service with seniority rights unimpaired and compensate her an amount equal to what she could have earned, including but not limited to daily wages, overtime and holiday pay, had discipline not been assessed.

3. The Carrier shall now expunge the charges and discipline from the Claimant's record."

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.

On May 8, 1991, a Hearing was held before this Board during which the following facts were presented:

On November 5, 1988, the Carrier advised the Claimant by letter, of the following charges:

"Charge 1: It is alleged that on September 6, 1988, September 7, 1988 and October 8, 1988, you submitted falsified time cards in such a manner that you attempted to, or received pay for time not worked.

Charge 2: In that on September 11, 1988, October 9, 1988, and October 9, 1988, you submitted time cards with either reporting or off duty times (written in), not punched in by yourself with no supervisor's approval.

Charge 3: It is alleged that you submitted falsified supervisor's initials under reporting, or off duty times on September 5, 1988, September 6, 1988, September 7, 1988, September 10, 1988, September 23, 1988, October 1, 1988, and October 8, 1988.

Among the effective Amtrak rules, regulations, policies, and/or procedures which may have been violated in these circumstances are Rules F-3, K, L, O and D of the Amtrak Rules of Conduct."

Such Rules read as follows:

Rule F-3: Conduct involving dishonesty, immorality or indecency is prohibited. Employees must conduct themselves on and off the job so as not to subject Amtrak to criticism or loss of good will.

Rule K: Company Property Amtrak premises must be kept in a clean, orderly and safe condition. Unauthorized persons must not be permitted upon any Amtrak equipment or property. Only information authorized by the supervisor or required by law or labor contract may be posted in or upon Amtrak property.

Employees will not destroy, deface, vandalize or waste Amtrak property.

Theft, misappropriation, or use for personal gain of Amtrak funds, property or services, (including but not limited to, postage and mailing services, computer services, shipping services, printing services, communications services and the services of Amtrak employees) is prohibited. Employees must be specifically authorized to use the company's

credit or receive or pay out money on the company's account. Employees must use Amtrak funds, property, services and the services of other employees with care and economy and protect them from theft or abuse by others.

Employees will, at the request of their supervisor or when leaving Amtrak service, return any Amtrak property or equipment entrusted to their care.

Rule L: Obeying Instructions Employees must obey instructions, directions, and orders from Amtrak supervisory personnel and officers except when confronted by a clear and immediate danger to themselves, property, or the public. Insubordinant conduct will not be tolerated.

Rule O: Reporting and Availability for Duty Employees must report for duty at the designated time and place and must attend to their duties during assigned working hours. Employees may not be absent from their assigned duty or engage in other Amtrak business while on duty or on Amtrak property without the permission from their supervisor.

Employees will keep the appropriate Amtrak authority apprised of their current telephone numbers and addresses and will promptly notify, in writing, that Amtrak authority of any changes.

Rule D: Company Policies and Procedures Employees must understand and obey company and department policies, procedures and special instructions. Employees whose duties are in any way affected by a timetable or operating rules must obtain a copy of the current timetable and operating rules and must have them in their possession while on duty."

After several postponements, an Investigation into the charges was conducted on February 2, 1989, and concluded on June 1, 1989. The Hearing Officer rendered his decision on the matter on June 13, 1989, wherein he determined the Claimant was guilty of Charge 1, but found no evidence to substantiate the other two charges. The Claimant was assessed a five (5) day suspension held in abeyance for six (6) months pending any further Rule violations.

The Organization contends the Investigation was not fair and impartial because its Representative was prevented from pursuing a defense by constant interruptions by the Charging Officer for the Carrier. These interruptions were supported by the Hearing Officer, and, in fact, on many occasions he permitted the Charging Officer latitude in asking questions which he had denied the Claimant's Representative.

Beyond these procedural deficiencies, the Organization contends the Carrier failed to meet its burden of proof. It was obvious the manner in which timecards are handled is at best lax. It was shown that employees frequently signed their cards at the beginning of the day, on occasion punched someone else's card by mistake and often punched in a day ahead of time. This could easily have accounted for the Claimant having 10:30 A.M. on her card for September 6 and 7, 1988, which she had to scratch out to insert her actual starting time of 9:30 A.M.

As far as September 6 and 7, the Claimant's Supervisor indicated that it was entirely possible he asked the Claimant to sign in early and approved the change on her timecard. Even though he may have provided a written statement earlier denying some timecards contained his initials, he testified that the statement was not absolute and said it was entirely possible he had authorized the time changes on the cards on both days. These timecards were also approved by a timekeeper who saw nothing improper about the cards.

As far as the October 8, 1988 allegation, one only need examine the inconsistent testimony of the Claimant's evening Supervisor. She gave the Claimant permission to leave early, 6:15 P.M. She said she did not see the Claimant after 6:00 P.M. She first said she then tried to find the Claimant's timecard in its slot and could not. She discovered it on someone's desk around 6:20 P.M. Later she testified she pulled the timecard from its slot at 7:20 P.M. Because of these inconsistencies, there should be no credence placed in her testimony.

The Carrier contends the evidence supports the charges against the Claimant. It is incredible to believe that the Claimant's timecard could have been punched by someone else two days in a row. The written statement provided by her daytime Supervisor supports the Carrier's position. He states he did not personally initial the Claimant's timecards on September 6 and 7. The only feasible explanation is the Claimant punched in at 10:30 A.M., crossed out the indicated time and wrote in 9:30 A.M. personally authorizing the change.

The Claimant was unable to explain why her timecard on October 8, 1988, indicated a check out time of 7:00 P.M. when she actually left at 6:15 P.M. Nor could she explain how the initials of the daytime Supervisor appeared on the card by 7:00 P.M. that same evening.

The Carrier concludes that the evidence supports a finding that the Claimant was guilty of Charge 1 and that a five (5) day deferred suspension was appropriate.

It is clear to this Board that contrary to the Carrier's determination, there is insufficient evidence to support the charges related to the September 6 and 7, 1988, timecards. The daytime Supervisor testified he saw nothing improper with the Claimant's card. Additionally, he asserted he may well have requested she start work early on those days and could have authorized the use of his signature. He also lent credence to the Organization's position that employees frequently punched their cards the day before

for the next day, thus creating the possibility that someone did punch the Claimant's card in error requiring her to alter the time from 10:30 A.M. to 9:30 A.M. Even though the Supervisor's testimony was contrary to a written statement he signed earlier, he testified that at the time he signed the statement he indicated he "stood to be corrected" on the facts within the statement. There was no evidence which successfully impeached his testimony at the Hearing. If anything, the inconsistencies only serve to discredit any testimony or statement provided by this witness. Absent this testimony, the Carrier has nothing to support its charges relative to September 6 and 7.

The Carrier is on more solid ground in charging the Claimant with timecard violations on October 8, 1988. The Claimant was the person who had access to her timecard. If she had not been able to find it on October 8, it is inconceivable she would not have told the evening Supervisor. If she believed she was entitled to flex time, which would have allowed her to write in 7:00 P.M., she should have raised the issue with her evening Supervisor. She did not. The only feasible explanation for the daytime Supervisor's signature being on her timecard was that it was put there by the Claimant. Even though she may have been authorized to affix the initials of the daytime Supervisor on occasion, it was not carte blanche.

The Board recognizes that the daytime Supervisor testified that he may have been working at 7:00 P.M. on October 8, 1988, however, it is not conceivable the evening Supervisor would not have seen him that evening. Finally, the Claimant says she asked the evening Supervisor to check her out. Even if that were the case, it does not explain how her card was checked out at 7:00 P.M. and was initialed by the daytime Supervisor.

The Board believes there is sufficient evidence to show the Claimant was guilty of a timecard violation on October 8, 1988. The five (5) day suspension held in abeyance for six months was proper.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of August 1991.