

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29147
Docket No. CL-29545
92-3-90-3-504

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Organization (GL-10506) that:

1. Carrier violated the effective Agreement when following an investigation on August 11, 1989, it suspended Ms. R. L. Harris from the service of the Carrier for a period of five (5) days commencing with August 17, 1989, and

2. Carrier shall now compensate Ms. Harris for all time lost as a result of this suspension and shall clear her record of the charge placed against her."

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.

At the time of the incident precipitating this claim, Claimant was assigned as a Clerk on Position 324 at Carrier's Proviso, Illinois facility. During the course of her tour of duty on August 3, 1989, at about 5:30 P.M., two cars that had arrived from the Belt Railway Company were erroneously classified to Track 31 instead of Track 28. About an hour later, those cars were humped to Track 31. At approximately 9:18 P.M. Claimant noticed her error and corrected the computer record and waybill notation for the cars to indicate they should be classified to Track 28. The misclassification of the cars was not discovered until August 4, 1989, by a third trick clerk. The misclassification resulted in the cars being delayed for correct departure.

By letter of August 4, 1989, Claimant was notified by Carrier to appear for an Investigation into the following charge:

"Your responsibility in connection with your failure to properly perform your duties while working position 324 (TCMC) Clerk on August 3, 1989, commencing at 3:59 p.m. Specifically, your failure to properly handle cars DWC 605138 and TRSD 4462."

Following a Hearing on August 11, 1989, the Claimant was issued a discipline notice dated August 17, 1989, suspending her from service for five (5) actual days, effective that date.

At the outset, the Organization raises two procedural objections: that the charges were imprecise, in violation of Rule 21 of the Agreement between the Parties; and that the Claimant was denied a fair Hearing and "due process" because the Assistant Vice President, Station & Customer Services, issued the notice of Investigation, served as Hearing Officer, issued the discipline notice, and declined the Organization's appeal of that discipline.

With respect to the first objection, the charge as stated in the notice of Hearing "provided sufficient notice to permit the accused to prepare [her] defense" (Third Division Awards 20238, 21228, Second Division Award 8034). Further, Claimant has demonstrated in the Transcript of the Hearing that she had ample understanding of the charge. Moreover, she testified that she had been afforded the opportunity to have whatever witnesses she desired in her defense (Fourth Division Award 3167). Accordingly, there we find nothing on the record before us to support the Organization's contention that Carrier violated Rule 21 regarding specificity of the charge against the Claimant.

We turn next to the Organization's procedural objection that the Claimant's due process rights were violated by the multiple roles assumed by the Assistant Vice President. Absent contractual language to the contrary, the mixing of roles by a Carrier Officer does not per se constitute an unfair Investigation and Hearing. By electing to allow one person to wear multiple "hats" during the charging, investigatory, and appeals process, however, Carrier increases the risk of reversal and invites close scrutiny of its procedures. Second Division Award 5467. There is no evidence on the record before us to show that the Claimant actually was deprived of a fair and impartial Investigation.

It is the position of the Organization that, even absent the alleged procedural violations, Carrier's assessment of discipline is excessive under the circumstances. The Organization points out that Claimant corrected the error once she noticed it, and that the cars were subsequently delayed because Carrier failed to follow through on the correction. Accordingly, the Organization maintains that Claimant is being excessively punished for a mere error, compounded in its effects by the Carrier.

Carrier counters that it disciplined Claimant specifically for failure to carry out her duties properly, in particular when she failed to notify her Supervisors once she had discovered the misassignment of the cars in question. It also points out that the Claimant admitted at the Hearing that she misassigned the cars and corrected the errors without notifying her Supervisors that the cars had been misassigned. Finally, Carrier notes that it followed its own published discipline policy when it assessed the five day suspension. The Claimant had previously been placed on the discipline system and had received a letter of review regarding a prior "failure to follow instructions."

In light of the Claimant's admission that she did, in fact, misassign the cars in question and failed to notify her Supervisor's following her computer correction of that error, Carrier has sufficiently met its burden of persuasion with respect to the charges against her. Moreover, in view of Claimant's prior discipline record, we do not find the assessed discipline to be excessive, arbitrary or discriminatory. Accordingly, we will not disturb Carrier's assessment of discipline in this case.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1992.