

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(Northern Illinois Regional Commuter Railroad Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10581) that:

1. Carrier violated the effective agreement when, following an investigation held on April 3, 1990, it imposed discipline on Mr. Michael K. Morley by suspending him from Carrier service for a period of fifteen (15) days beginning April 12, 1990;

2. Carrier shall now compensate Mr. Morley for all time lost as a result of this suspension from duty and shall clear his record of the charges placed against him."

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.

The Claimant provided approximately 40 years of service to the Carrier and its predecessor. Prior to this incident, the Claimant had never been subject to any type of disciplinary action.

The Carrier charged the Claimant with offensive behavior, because the Claimant allegedly made personally derogatory statements to another Ticket Sales Clerk several times. The Carrier alleged the offensive behavior occurred while the Claimant was on duty as a Ticket Sales Clerk, Position 11, at the Chicago Union Station on Friday, March 9, 1990. Specifically, the Carrier charged the Claimant for allegedly violating General Rule N of the Carrier's Employee Conduct Rules. General Rule N provides in relevant part: "Employees must not be: (6) Quarrelsome or otherwise vicious."

After several postponements, a Hearing was conducted on April 3, 1990. As a result of the evidence produced at the Hearing, the Carrier assessed a penalty of 15 days actual suspension.

The Organization contends the Claimant was denied a fair and impartial Hearing, so the discipline must be set aside. The Organization cites Rule 56 of the Agreement which states in relevant part:

"If unable to secure witnesses within the specified time reasonable postponement at the request of the company or employee or employee representative may be had."

The Organization contends the Carrier violated this provision, because the Carrier went on with the Hearing even though one of the Claimant's witnesses was unavailable to testify due to illness. Although the Carrier previously received an extension due to the unavailability of one of its witnesses, the Carrier denied the Claimant's request for an extension. The Hearing Officer denied the Claimant's request for an extension because some of the witnesses were already enroute to the Hearing.

The Carrier noted the Hearing Officer gave the Claimant the opportunity to present his witness' testimony. The Hearing Officer stated "if Mr. Thomas' testimony was determined to be necessary, the investigation would be held in recess until such time as Mr. Thomas would be available to attend."

Although the Hearing Officer afforded the Claimant the opportunity to recess the Hearing and reconvene it at a later date with his witness present, the Organization maintains all the testimony must be presented at one time "so that both sides can view it in toto and in proper context." Therefore, the Organization contends the Claimant was denied Agreement due process rights.

The Organization stated a Supervisor intervened between the Claimant and the other Clerk at the time of the incident to caution the Claimant about making derogatory comments. The Organization contends the intervention by the Supervisor at the time of the incident sufficed to reprimand the Claimant, and this matter should have been considered closed. The Carrier noted the Supervisor did not formally reprimand the Claimant, rather she merely exercised management discretion to intervene at the time.

The Organization provided substantive evidence concerning the Claimant's character to prove he is neither quarrelsome nor vicious. The Claimant contended he intended to counsel his fellow Clerk, and he never intended to insult her. The Organization also questioned the other Clerk's motives in filing a complaint against the Claimant because she waited more than one hour and twenty minutes after the incident to report it to her Supervisor.

Also, the Organization argues the Claimant committed no disciplinary offense. However, the Carrier offered the testimony of the other Clerk who testified the Claimant repeatedly made the statement "...you are like a dog in heat...." In addition, the Carrier presented two other witnesses who testified they heard the Claimant make these remarks.

The Claimant was charged and found guilty of offensive behavior in making personally derogatory statements to a female employee. The evidence presented at the investigation fully supports the finding of guilt.

The Claimant's conduct, at best, was thoughtless and inconsiderate. It cannot be condoned. Nonetheless, the record reveals that the Claimant has been in service for more than 40 years, and this is the first instance that he has been charged, let alone found guilty, of any violations of Carrier Rules.

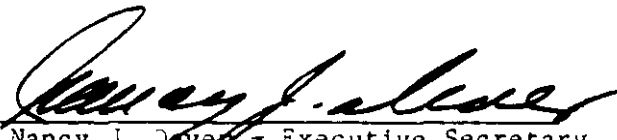
The purpose of discipline should be instructive rather than punitive. Under the circumstances, we find that a 15 day suspension was excessive. The discipline shall be reduced to ten days, and the Claimant shall be compensated for any loss of pay in excess of ten days.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1992.