

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 30062
Docket No. CL-30458
94-3-92-3-302

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

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(MidSouth Rail Corporation

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10787) that:

1. Company violated the terms of the Agreement between the parties beginning October 23, 1991, when Claimant C.T. Wade was withheld from service pending investigation October 31, 1991, and suspended for thirty days beginning November 8, 1991, through December 7, 1991.
2. Company shall now be required to compensate Claimant for all time lost as a result of an improper and unfair investigation and clear her record of all charges.

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 employe 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.

On October 23, 1992, the Assistant Director, General Accounting, learned from another Carrier official that Claimant, an Accounting Clerk, had told another Accounting Clerk that an Officer had been fired. The Assistant Director summoned the two clerks to his office to explain that the Officer had voluntarily resigned. He also intended to remind them of the confidentiality of information they might obtain while employed in the Payroll Department. After ordering the two clerks to refrain from repeating the inaccurate rumor about the former Officer, he asked

them if they understood his order. This was followed by a heated argument between Claimant and the Assistant Director, which culminated with the Assistant Director removing Claimant from service pending an Investigation for insubordination.

An Investigation was conducted on October 31, 1991, and by letter dated November 8, 1991, Claimant was informed she was suspended for 30 days. The time Claimant was out of service pending the hearing was not included in her suspension. Prior to addressing the merits of the discipline, we note that the Organization has protested the timeliness of this notice, asserting Claimant received it on November 12, 1991, beyond the ten day time limit. Because we consider the time limit to have been satisfied when the notice was sent, we do not find a time limit violation.

Although there is sufficient evidence to conclude Claimant acted inappropriately when she met with the Assistant Director, there is also evidence which shows that his conduct was loud, accusatory and demeaning to Claimant and the other employee. Claimant merely responded in kind. Obviously, Claimant's conduct warranted some discipline, but in determining the amount of discipline to impose, Carrier should have considered the Assistant Director's conduct which precipitated her response. After examining the record in its entirety, including the fact that Claimant had six years of service at this time with no indication she had been disciplined previously, we conclude that the discipline imposed by Carrier was excessive. Accordingly, we will direct that Claimant's discipline be reduced to a letter of reprimand. We further direct that Claimant be compensated for all time lost.

Claimant should be aware that this Board is not exonerating her. While her conduct may be understandable, it is not excusable. She is cautioned that she must control her responses if placed in a similar situation again.

A W A R D

Claim sustained in accordance with above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 17th day of February 1994.