

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 31775  
Docket No. CL-32387  
96-3-95-3-288**

**The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.**

**(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(Alton & Southern Railway Company**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Organization (GL-11144) that:**

- 1. Carrier violated the Agreement, expressly Rule 10 and any associated rules contained therein when, on the date of September 12, 1994, it assessed discipline of fifteen (15) days deferred suspension to Clerk, Mr. Dana Williams, East St. Louis, Illinois following formal investigation held on Wednesday, September 7, 1994; such discipline being excessive and unwarranted due to the facts and circumstances brought forth throughout the course of the investigation.**
- 2. Carrier shall now be required to remove the fifteen (15) days deferred suspension from Mr. Williams' personal record; and, that the transcript of the hearing held Wednesday, September 7, 1994 and all reference thereto be removed from Mr. Williams' personal 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 employee or employees involved in this dispute are respectively carrier and employee 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 August 25, 1994, Claimant, who had just under two years' seniority, was assigned as an Abstract Clerk. His responsibilities included verifying car numbers received by Carrier on incoming trains. Claimant failed to detect one extra car in the cut which was not on the hard copy list provided to him. The error was detected by the Crest Operator. As a result of Claimant's error, three of the cars which preceded the car that was missed were misrouted.

The Organization maintains that Claimant's due process rights were violated because the same Carrier officer signed the notice of charges, imposed the discipline and served as the first level of appeal. The Organization further maintains that on the night in question, it was dark, the light was misadjusted, Claimant's view was not ideal, the train was coming in too fast, the location of the check was prone to missing a car on inbound trains, and Claimant did find nine other errors on the same train. The Organization contends that Claimant was not negligent and that, in any event, the penalty imposed was overly harsh.

Carrier maintains that it did not violate Claimant's due process rights. Carrier further argues that the mitigating factors cited by the Organization do not change the fact that Claimant missed the extra car. Carrier contends that the penalty imposed was appropriate under the circumstances.

The same Carrier officer who issued the notice of charges, signed the letter imposing discipline and served as the first line of appeal. We look with considerable disfavor upon the same officer playing such multiple roles. However, in the absence of express contract language prohibiting such multiple roles, the practice is not per se a violation of the employee's due process rights. As the Board stated in Third Division Award 28567:

**"The Board has sanctioned a multiplicity of roles in some cases while it has held in others that due process rights were violated. We must examine the circumstances in each case that comes before us."**

In the instant case, the Carrier officer who signed the charges, signed the discipline letter and served as the first level of appeal was not a witness in the Hearing. Indeed, he was not on duty the night of the incident and, therefore, had no personal knowledge of the incident. He did not serve as the Hearing Officer. The facts were not in dispute; only inferences to be drawn from the undisputed facts were contested. Furthermore, there was a second level of appeal that was completely independent. Under these circumstances, we cannot find that Claimant's due process rights were violated. See, e.g., Public Law Board No. 5064, Award 10.

Turning to the merits, we find substantial evidence to support the finding of negligence made on the property. There simply is no dispute that Claimant missed the extra car and that it was his responsibility to catch it. We recognize the mitigating factors urged by the Organization. Taking these into account, we are unable to say that the penalty imposed, which involved no loss of compensation, was arbitrary, capricious or excessive.

### **AWARD**

**Claim denied.**

### **ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 20th day of November 1996.**