

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 31819
Docket No. CL-32074
96-3-94-3-485**

The Third Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE:
(Houston Belt & Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11088) that:

1. The Houston Belt & Terminal Railway Company violated the Rules Agreement effective April 15, 1972, as amended, when it improperly suspended and charged clerical employee P. P. Shuman with insubordination and assessed discipline of dismissal from service effective October 5, 1993.

2. The Houston Belt & Terminal Railway Company shall be required to return clerical employee P. P. Shuman to service with all seniority and service rights restored unimpaired, made whole for all lost wages, including overtime which Ms. Shuman would have been entitled, interest on all monies at the prime rate plus 10% at the highest rate during the interim between being suspended and returned to service, September 16, 1993 through October 20, 1993; all charges and references be rescinded and deleted from Ms. Shuman's personal records maintained by the Houston Belt & Terminal Railway Company.”

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.

As a result of a formal Investigation initially convened on September 21, and ultimately concluded on October 1, 1993, Claimant was notified that she was found guilty of insubordination by failing to comply with the Terminal Manager's instructions concerning movement from her position on the Freight Agency Extra Board to an OCC position, by submitting a request to, and occupying, a hold down in the OCC Department on September 14, 1993. She was initially suspended from service pending Investigation on September 16, and was ultimately dismissed effective October 5, 1993. Thereafter, Carrier modified its dismissal and returned Claimant to service after converting her penalty to a 24 day suspension.

Claimant, a 17 year employee assigned to the Freight Agency Extra Board at the time in issue, was advised by her Terminal Manager on September 3, 1993 that she could not go on a hold down in the OCC Department while she was assigned to the Freight Agency Extra Board, and that she must remain in her Department. During the Terminal Manager's scheduled vacation a few days later, Claimant requested and accepted a position in the OCC Department, but was later removed after completion of only one shift by the Customer Service Manager. Upon the Terminal Manager's return from vacation, Claimant was charged with insubordination. Claimant also filed claims concerning Carrier's denial of her right to occupy hold downs in the OCC Department, and requested an Unjust Treatment Hearing. That request was subsequently withdrawn by the Organization.

The Organization raises a number of procedural objections to the conduct of the Investigation. A review of the record convinces us that Claimant was fully advised of the nature of the charges against her, and that the Hearing Officer's attempts to limit the Investigation to the insubordination charge and away from the alleged Rule violation was appropriate. The thrust of the Organization's argument is that the Claimant was not insubordinate because the order she disobeyed was not a proper order, and violated the provisions of Rule 24, permitting her the right to apply for such hold downs. The Organization also contends that the penalty imposed was unduly harsh and excessive.

The Carrier argues that Claimant was clearly insubordinate by not following the order of her superior to remain in her Department, and that such conduct is a serious offense meriting a harsh penalty, relying upon Third Division Awards 25239, 25192, 16948, among others. The Carrier contends that the Claimant was obligated to follow the principle of "work now, grieve later" rather than disobey her supervisor's instructions, and that she could have filed claims for being denied her alleged contractual right to move, which she later did.

A review of the record convinces us that there is substantial evidence to support the Carrier's determination that Claimant was insubordinate. It is clear that Claimant understood her supervisor's instruction not to move out of her Department prior to her requesting and occupying the hold down in the OCC Department. The following comments of the Board in Third Division Award 23973 are equally applicable herein:

"The essential facts in this dispute are not in dispute. The claimant in this matter failed to adhere to one of the basic industrial and labor relations principles. This is when an Employee is given a direct order, the Employee is 'to work now and grieve later'. The principle has been well established in the railroad industry [citations omitted]."

Despite the fact that Claimant and the Organization seriously questioned the validity of the Terminal Manager's interpretation of Rule 24, she should have grieved his order rather than knowingly disobey it. See Public Law Board No. 3148, Award 21; Public Law Board No. 2794, Award 1; Public Law Board No. 2664, Award 14; Third Division Awards 21059, 25080. While there is no doubt that insubordination is a serious offense, under the circumstances of this case the Board is convinced that holding her out of service pending the completion of the Investigation and ultimately assessing her a 24 day suspension was excessive, in light of her record of lengthy good service and the lack of evidence of any compelling reason or urgency for removing her from service immediately upon return of the Terminal Manager when her insubordination had occurred one week earlier; see Third Division Award 21341.

We therefore direct that the 24 day suspension be reduced to 15 days, and that Claimant be reimbursed for her lost wages for the nine day difference in that period of time. There is no Agreement support for directing that interest be paid upon that amount.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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

Dated at Chicago, Illinois, this 26th day of December 1996.