

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32207  
Docket No. CL-33466  
97-3-96-3-948**

**The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.**

**(Transportation Communications International Union  
PARTIES TO DISPUTE: (  
(National Railroad Passenger Corporation (AMTRAK)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Organization (GL-11537) that:**

- (1) Carrier acted in an arbitrary, capricious, and unjust manner in violation of Rule 24 of the Agreement when, by notice of May 18, 1995, it assessed discipline of ‘Termination from Service’ against Claimant, pursuant to an investigation held on May 9, 1995.**
- (2) Carrier shall now reinstate Claimant to service with seniority rights unimpaired and compensate Claimant an amount equal to what she could have earned, including but not limited to daily wages, holiday pay and overtime, had discipline not been assessed.**
- (3) Carrier shall now expunge the charges and discipline from Claimant’s record.**
- (4) Carrier shall now reimburse Claimant for any amounts paid by her for medical, surgical or dental expenses to the extent that such payments would be payable by the current insurance provided by Carrier.”**

**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.

At the outset, we note that this claim was progressed before the Board at the same time Third Division Award 32206 was heard and, we further note, that the charges preferred against Claimant Leticia Cabral in this instant case are of the identical nature which resulted in Carrier's assessment of discipline on Claimant of a ten day actual suspension and a final warning which was subsequently reduced by the Board to a five day actual suspension and a five day deferred suspension.

The record evidence reflects Claimant has been a Reservation Sales Agent (RSA) since January 18, 1991. For over 20 years, Carrier has utilized a reservation sales monitoring system that allows a Supervisor to monitor individual Sales Agents on a random spot check basis for quality control purposes or, on a concerted targeted basis if a Sales Agent is suspected of improperly handling customer calls. Monitoring of customer calls is part of Carrier's Quality Assurance Program which imposes a requirement on every Supervisor to conduct a complete monitor of RSAs under their supervision once a calendar quarter and spot monitors periodically throughout each quarter. Each Supervisor is requested to monitor calls at least 15 times per day. There is no set standard with respect to the amount of time a RSA must be monitored. Each RSA is given a copy of Carrier's policy pertaining to "call quality" which they acknowledge receiving by signing a receipt statement. Said Special Instructions were revised by Carrier on March 1, 1994 and Claimant signed a receipt on April 14, 1994 acknowledging she had been given a copy of the revised Special Instructions. Of particular importance relative to the case at bar as was true for the prior case involving Claimant referenced hereinabove is Section 8 of the Special Instructions, to wit:

"Use of the 'on hold' button must be limited to looking up information only. A caller must never be left on hold for more than 30 seconds without a 'Please Continue To Hold' statement from you."

**“Call quality is considered to have been achieved by a RSA when the RSA handles a call and meets all the criteria of Carrier’s call quality evaluation which entails properly greeting the Caller, utilizing the proper question and answer technique to ascertain the customer’s needs, addressing those needs, seeking to secure or actually making the sale and then properly closing the call communication.**

**General Supervisor Michael Nunemaker, in testimony rendered at the May 9, 1995 formal Investigation conducted in connection with three charges made against Claimant, all of which alleged she had not attended to her duties in an acceptable manner, related that as part of his duties as General Supervisor, he had oversight responsibilities for Carrier’s “Productivity Program” which entailed in part, reviewing statistics associated with RSA job performance. Nunemaker explained that in conducting such reviews he focused on a determination as to whether the RSAs were performing up to standards or whether they exhibited deviations away from the norm. Whenever he discerned that a RSA was not performing up to standard, Nunemaker explained he would meet with the Supervisor of that RSA to chart a course of action which could include such things as sitting down and talking with the RSA, monitoring the employee through a physical or a “by-site” means to determine what the factors are that are affecting the RSA’s performance in a negative manner. Nunemaker recalled that relative to reviewing Claimant’s job performance he met with her Supervisor, Velvet Samuel, and recommended to Samuel that she monitor Claimant through the phone system. Nunemaker maintained that in making such recommendation to Samuel he was not singling out Claimant per se explaining this was a routine course of action he recommended in the case of any employee who was performing poorly. According to Nunemaker, he has made such recommendations to Supervisors in the past on numerous occasions.**

**Samuel confirmed in her testimony that Nunemaker, her superior in the chain of command, specifically requested of her that she monitor several of the RSAs under her supervision and that Claimant was among those Agents she was to monitor. Samuel explained that on the morning of February 16, 1995 she performed a spot monitoring of three calls handled by Claimant. Samuel related she performed the spot monitoring from inside a Quality Assurance (QA) room where she had total privacy and there were no sources of noise emanating from inside the room. Samuel noted that situated directly outside the QA room there are file cabinets and there are employees accessing the file cabinets by opening and closing the drawers. However, the noise emanating from this**

source outside the QA room did not, according to Samuel, affect her activity of phone monitoring from inside the QA room.

Samuel testified at the Investigation that she plugged into Claimant's line for the first time on the morning of February 16 at precisely 8:48 A.M. and when she entered the line she heard Claimant properly greet the Caller, a Mr. Ferguson. According to Samuel, Ferguson explained to Claimant that he left a black duffle bag with a 24 inch long zipper on the bus at the Phoenix Airport, that he had been speaking with someone at Carrier's Phoenix Station earlier in the day, that the person he spoke with was researching the whereabouts of the bag but that, at some point, the call became disconnected. Samuel reported she heard Claimant ask Ferguson for purpose of clarification if the person at the Phoenix Station was checking on the bag for him and after Ferguson responded that he was, Claimant said to Ferguson, "one moment." Samuel related that for the next four minutes Claimant kept the line open, meaning she did not manually put Ferguson on hold by pressing the hold button, but by saying to Ferguson "one moment" she gave Ferguson the impression he was on hold. Samuel asserts that in the four minutes that followed Claimant's last comment to Ferguson of "one moment," there was absolutely no further conversation that transpired and that at 8:52 A.M., Ferguson terminated the call by hanging up. Samuel maintained that in addition to not saying anything further to Ferguson past the "one moment" remark, Claimant did not place an out call seeking assistance in resolving Ferguson's reported problem explaining that had she placed such an out call for assistance it would have shown up on her monitoring equipment. Claimant, in her testimony at the Investigation, corroborated Samuel's account, in part, that after Ferguson related the problem of losing his bag on the bus and giving her a description of the bag, she said to him, "one moment, please" and kept the line open rather than putting him on hold. Claimant explained that after she told Ferguson "one moment, please" she consulted the City Profile in Phoenix for the purpose of locating a telephone number for the buses because he lost his luggage on the bus and not on any Amtrak train. Claimant related it took her a few minutes to make the search due to the fact she could not find the information. Claimant testified that while she was still looking for the number, Ferguson terminated the call by hanging up. Claimant explained that in the interim time period she was looking for the number in question she did not apprise Ferguson of what she was doing at certain intervals while he was waiting as she did not think doing so was necessary. Claimant disputed, however, Samuel's testimony as to the length of time Ferguson was waiting before he hung up from his end, asserting it was not more than two minutes as opposed to the four minutes attested to by Samuel. Claimant explained that the first half

of the time the call was in progress, it was taken up by Ferguson's explanation of the problem he was experiencing. Claimant averred that she serviced this call by attempting to help Ferguson, but that she was prevented from completing the call because Ferguson hung up.

With respect to this first monitored call, Samuel acknowledged that one of the purposes of monitoring calls is to coach RSAs and that the monitoring equipment allows her to intervene on the line during a call without the Caller's knowledge, but only when the call has been put on hold by the Agent using the hold button on the key pad. Samuel explained there are several reasons for intervening a line, to wit: (1) if a call has been on hold for a long time and the length of time involved appears to indicate the Agent is having a problem with the call and that the Agent, as a result, is in need of assistance; and (2) if an Agent indicates he/she is about to make a gross misjudgment error, intervention occurs to prevent the Agent from actually making the error. Samuel noted that even though Claimant had not said anything to Ferguson beyond, "one moment, please" and that silence reigned thereafter without Claimant adhering to the policy of acknowledging the Caller over intervals of 30 seconds, such as, "please continue to hold," or "I will continue to check for you," she did not intervene the line because Claimant had not put Ferguson on hold by depressing the hold button thus, keeping the line open, and therefore, had she intervened, Ferguson would have overheard any conversation she would have had with Claimant. However, Samuel also testified she did not deem it necessary to intervene the line because she preferred to allow Claimant the opportunity to service the call to make certain there was not a problem. Samuel conceded in her testimony that though she was situated about 20 feet away from Claimant while monitoring the call, she never stood up to gain a visual sighting of Claimant to observe what she was doing during the time she was not saying anything to Ferguson. Samuel asserted, contrary to Claimant's espoused view, that Claimant did not provide Ferguson the service that prompted his call. Samuel conceded that she does not know for a fact Claimant was not attempting to locate the telephone number for the bus, as she so asserts, during the time she was not saying anything to Ferguson, but she does know that Claimant failed to tell Ferguson what she was doing and, as a result, Claimant failed to comply with Section 8 of the Special Instructions.

Samuel testified she monitored a second call handled by Claimant that dropped in on Claimant's line at 9:10 A.M. on February 16, 1995. According to Samuel, Claimant's line showed "busy in" on the Collins phone monitoring equipment meaning the call was awaiting servicing by Claimant, but Claimant did not respond with any

greeting, nor did she say anything at all, and at the Caller's end, the only sounds she heard were breathing and kids in the background talking, though it could have been adults. Samuel testified that for four minutes from 9:10 to 9:14 A.M., there was absolutely no conversation that occurred between Claimant and the Caller and at 9:14 A.M. the Caller terminated the call by hanging up. Samuel conceded she did not intervene the line with respect to this call which, like the first call from Ferguson, remained opened on busy-in so that anything she may have said to Claimant on intervention would have been overheard by the Caller. However, Samuel testified she was not inclined to intervene the line on this call because she did not want to "jump the gun" explaining she wanted to make sure that what she was hearing was what she was hearing. As an additional reason for not intervening, Samuel related she wanted to see Claimant service the call rather than to see her get in trouble. In other words, Samuel explained she was giving Claimant the benefit of the doubt and hoping she would handle the call. Samuel maintained that while the call was engaged she did not question why there was no response made by either Claimant or the Caller. According to Samuel, it was her election and choice not to intervene the line on this call which, in her view, Claimant failed to handle to completion.

In her testimony concerning this second monitored call, Claimant asserted she could provide no information because she had no recollection of its occurrence, maintaining that the call attested to by Samuel never dropped in. Samuel, in rebuttal testimony, related that after monitoring a third call which Claimant failed to handle satisfactorily, she convened a meeting with Claimant and TCU Representative Borel, wherein she reviewed with Claimant the details of the three monitored calls. At this meeting, according to Samuel, Claimant did not assert that this second monitored call did not take place. In recalling this meeting Claimant contended she could not remember whether she told Samuel she did not believe this call occurred, explaining that the reason she could not remember was because, in that meeting, the discussion that ensued pertained to more than just the three calls in question here, estimating that perhaps the discussion concerned about ten or more calls.

Samuel testified that after the Caller terminated the second monitored call at 9:14 A.M. she remained on Claimant's line and, at that time another call dropped in and she monitored this call as well. According to Samuel, after the call dropped in, Claimant immediately placed the call on hold by depressing the hold button on the key pad without first greeting the Caller. The call remained on hold for two minutes and, at 9:16 A.M., Samuel testified, the line reverted to busy-in, which means, Claimant took the Caller off

of hold and when she did this, she (Samuel) heard the Caller say "hello" three consecutive times, but heard no response from the Claimant. In addition to the three hellos, Samuel recalled she heard the Caller whistling into the receiver and, in the background, music was playing and there was talking going on. According to Samuel, sometime after 9:16 A.M. the Caller terminated the call by hanging up. Samuel acknowledged it is her responsibility to see to it that Agents are properly handling their calls, but she elected not to intervene the line on this third call either, explaining she wanted to be totally sure, based on what she had observed with the prior two calls, that there might be a problem with Claimant's performance. Additionally, Samuel asserted, in order to more accurately ascertain whether a call is being properly serviced, it is preferable to listen in on the entire call as opposed to listening to part of a call and then intervening the line. Samuel maintained she opted to listen in on the calls she monitored that were handled by Claimant in their entirety in order to get an accurate picture of how Claimant was servicing her calls. Samuel conceded that in monitoring calls at other times there had been occasions where she intervened the line and acknowledged that this is not an uncommon practice in the railroad industry. Samuel noted that in handling this call at no time did Claimant seek assistance by using the assistance button on the key pad and, at no time did she (Samuel) hear Claimant conversing with a fellow Agent, Rate Desk employee, or a Supervisor asking them questions or seeking their assistance in connection with this call. Samuel asserted that Claimant failed to provide this third Caller with quality service.

Claimant asserted with respect to this third monitored call that when it dropped in on her line she greeted the Caller by stating, "Amtrak [her name], can I help you," but there was no response from the Caller. Claimant related she waited for the Caller to respond to her greeting and when that did not occur she put the Caller on hold to check her telephone pad and headset. Claimant testified that when she plugged back into the system she heard a lot of background noise at the other end of the line and a man talking to someone else in the same location he was calling from. Claimant related she said, "hello" but guessed the Caller did not hear her as he proceeded to hang up. Claimant maintained that about a minute elapsed from the time she placed the Caller on hold until the time she returned to the line and conceded that during this interim period of one minute she did not return to the line to apprise the Caller he should continue to hold. Maria Loper, a RSA with three and one-half years of service, testified that on the morning of February 16, 1995 she was seated at the work station located next to the Claimant. Loper related that at some time in the morning she looked over at Claimant and because of the puzzled expression she observed on Claimant's face she

asked Claimant what was the matter, and that Claimant responded to her query by telling her, "I hear something in the back of this phone, but there is no one on the line - what should I do?" Loper related she answered by telling Claimant, "I don't know, just stay on and see if they come on." According to Loper, after Claimant stayed on the line for awhile she again asked her what she should do and again she answered Claimant by saying she did not know. Loper recounted that that concluded their verbal interchange regarding the problem and that the next thing she knew Carrier called in Claimant. Loper estimated that the problem Claimant was experiencing with her phone equipment lasted for more than a minute. Loper conceded that her only knowledge of the problem was limited to what Claimant told her the problem was and, therefore, she did not have firsthand knowledge that there was an actual problem with Claimant's phone. Loper confirmed that part of what Claimant told her about the problem was that there was someone on the line at the other end, but that the person could not hear her.

Carrier argues that Claimant's handling of all three calls was an infraction of Rule 24, specifically paragraph (d)(4) which reads in pertinent part as follows:

"(4) In cases involving misconduct toward customer, the discipline assessed may be actual or deferred...

NOTE: As used above, the term 'misconduct toward customer' will include hanging up on a customer, disregarding a customer by putting them on hold without a good reason, being rude or abusive to a customer."

Carrier asserts that the act of dropping calls and placing Callers on hold with no apparent reason is deemed to be conduct so egregious in nature as to constitute a dischargeable offense. Carrier notes that in a case almost identical to the instant case, Award 26 of Special Board of Adjustment No. 1024 upheld the discharge of a Chicago RSA. In that case, which also involved the mishandling of three incoming calls, the Board stated in pertinent part the following:

"As Carrier found, Claimant's deficient performance was a very serious offense. Moreover, within the previous year, Claimant received a ten day suspension and final warning for conduct partly involving similar misconduct which the Board upheld in Award No. 22. In view of this and



**Claimant's relatively short service, Carrier's decision to discharge Claimant must be upheld."**

**Carrier asserts that in addition to imposing a ten day actual suspension and a final warning on Claimant for commission of the identical offense in August 1994 it also had counseled Claimant on two prior occasions for the same conduct. Carrier explains Claimant's conduct cannot be tolerated as reservation sales are one of its chief sources of revenue and such conduct as engaged in by Claimant here is detrimental to these sales. Given the seriousness of the offenses committed by Claimant, and her past record of discipline for similar infractions, Carrier submits that dismissal from service was appropriate and cannot be considered, under all the given circumstances, to be arbitrary, capricious, or an abuse of its managerial discretion.**

**The Organization argues that while Carrier intimates, by way of its charges, that Claimant improperly performed her duty in servicing the three calls in question due to "willful negligence," Carrier failed to produce any substantive evidence that supports this position. In fact, the Organization alleges that the evidence supports the proposition that Carrier actively sought to discharge Claimant. Specifically, the Organization references correspondence exchanged between the Parties in the summer of 1994 which reflects there was an effort by local Management to renege on an agreement to expunge a disciplinary action from Claimant's personnel file. The outcome of this exchange of letters between Vice General Chairman Michael Davis and Division Manager Labor Relations Thomas W. Fleming was that Carrier informed the Organization it was its intent to expunge the subject discipline and, to that end, Fleming assured Davis he had advised supervision to facilitate the expungement of the discipline per the Parties' prior agreement. As a second example of Carrier's intent to rid itself of Claimant's continued service the Organization cites verbal communication attributed to the former Director of Riverside, the very same Management official who refused to honor the Parties' agreement to expunge the discipline referenced hereinabove from Claimant's personnel file, that he openly boasted to local TCU representatives that Claimant would be dismissed under his watch. According to the Organization, it was this verbal boasting that prompted it to initiate the correspondence between Davis and Fleming regarding the honoring of the expungement agreement which called for the automatic expungement after the lapse of a specified period of time. As a third example of Carrier's intent to end Claimant's employment the Organization notes that General Supervisor Mike Nunemaker issued instructions to Supervisor Velvet Samuel to specifically target Claimant by way of monitoring her phone calls, thereby not relying on random spot**

checks made of RSAs periodically to assess her job performance. Finally, as a last example of Carrier's intent to be rid of Claimant, the Organization notes that notwithstanding the protestation of Carrier that the mishandling of customer calls is extremely detrimental to its business, both to its reputation and economically, nevertheless, Samuel allowed Claimant to proceed with three calls which, in her view, were improperly handled by Claimant, without once intervening to instruct Claimant to correct her performance or to inquire of Claimant if she needed assistance.

If the evidence purports to show anything regarding Claimant's performance in handling the three calls in question it is, the Organization submits, that with respect to the second and third calls, Claimant appears to have experienced problems with her telephone equipment through no fault of her own. But even assuming, arguendo, that Claimant is culpable to some degree in not adhering to the revised Rules comprising the Special Instructions Governing Performance of Reservations Sales Agents given to her on April 14, 1994, but more specifically Section 8 of the Instructions, nevertheless, the Organization submits the quantum of discipline assessed was excessive, that is, not commensurate with the alleged infractions committed and, in addition, not progressive and, therefore, not corrective in nature in that, at the time Claimant was discharged, she had only one previous disciplinary action on her work record.

Based on the foregoing argument asserted, the Organization requests this Board to sustain the claim in its entirety. In rebuttal, Carrier argues that Claimant's non-recollection of the second monitored call is wholly self-serving and Claimant's allegation with respect to her having equipment problems with respect to the third call is contradicted by the fact she did not seek any assistance to correct the so-called technical equipment problem she was supposedly experiencing. Carrier, relying on its position as set forth hereinabove, requests the Board to deny the claim in its entirety.

Based on the record evidence in its entirety, the Board is persuaded that there is merit in the positions advanced by both sides, but that on balance, the position advanced by the Organization must prevail, though the remedy sought must be modified to comport with the facts reviewed hereinabove. There is no question that Claimant failed to abide by the requirements set forth in Section 8 of the "Special Instructions" in handling the call from complainant Ferguson. The evidence convinces the Board that by Claimant stating to Ferguson, "one moment" or "one moment, please," she effectively put Ferguson "on hold" even though she did not depress the "hold" button on her key pad, and in so doing, she simply failed to comply with the requirement of Section 8 when,

for at least two minutes by her reckoning, she did not, in 30 second intervals, apprise Ferguson to continue to stay on the line as she was still researching information to assist him in resolving his complaint. By not adhering to this Section 8 requirement and remaining silent for the remainder of the call, she inadvertently sent a message to Ferguson, like the person he had contacted at the Phoenix Station who had disconnected his call prior to calling Claimant, that after hearing his complaint, she was not interested in helping him with his problem and, in so concluding, he hung up, thereby terminating the call. Although the problem did not involve Amtrak as Ferguson stated his lost bag had been on a bus at the airport, nevertheless, given his alleged treatment at the hands of an employee at the Phoenix Station coupled with his apparent perception of Claimant's inability or unwillingness to assist him, Amtrak's reputation potentially could have been damaged given Ferguson's view of the situation. However, the extent of the damage done to its reputation, if any, by this incident, will never be known by Carrier as there is no evidence in this record that Ferguson ever filed a formal complaint with respect to the treatment he experienced from the Phoenix Station employee and/or from Claimant. Additionally, Amtrak may have suffered economically as a result of its handling of Ferguson either at the time his problem occurred or, at some future time, but again there is nothing in the way of any concrete evidence to show that Ferguson's treatment resulted in an economic outcome that was detrimental to Carrier. With respect to this first monitored call, we do not concur in the Organization's position that it was incumbent upon Samuel to intervene the line when it became obvious that Claimant was not fulfilling the particular duty of her RSA position by not informing Ferguson her absence from further conversing with him was due to devoting her efforts to locating a telephone number of the bus company, as he already had called Carrier's Phoenix Station and did not receive any satisfaction. In fact, because Claimant had kept the line open, any intervention by Samuel at any point in time during this call would have been overheard by Ferguson and, we concur, this would not have impacted in any positive way on Carrier's image and certainly would have cast Claimant in a negative light, conveying the message to Ferguson that she was ineptly performing her job. While it is an unknown factor as to the reason why Ferguson subsequently hung up, thereby terminating the call and foreclosing any assistance from Claimant that might have been forthcoming, the fact is, that had Claimant performed the handling of this call in conformance with Carrier's policy, specifically by keeping Ferguson apprised of what she was doing once every 30 seconds, she would have performed her duties in a satisfactory manner, meaning she would have rendered quality service even if Ferguson had hung up anyway. However, in failing to adhere to Section 8 of the "Special Instructions" we concur in Carrier's position that

despite her efforts to assist Ferguson in resolving his problem she failed to provide "quality service" as that term is envisaged and defined by Carrier, in the handling of this call. We do not concur however, in consideration of all the prevailing circumstances, that Claimant's failure in the handling of this call was a result of willful negligence on her part and therefore, we do not concur that her non-quality service was equivalent to the commission of an egregious offense.

In light of the fact that Claimant alleges she cannot recall anything in connection with the second call, the Board is compelled to accept Samuel's testimony as representing the whole truth of the matter with respect to this call. Additionally, we find Claimant's lapse of memory and her explanation as to why she cannot remember the call as very convenient and disingenuous at the same time. However, we are equally perplexed at Samuel's handling of her supervisory responsibilities upon completion of this call which was to let Claimant field yet another call after Claimant, for whatever reasons, permitted a Caller to go completely unacknowledged for a period of a full four minutes. While we understand Samuel was not in a position to intervene the line anytime during this call due to the fact the line remained opened for all four minutes before the Caller terminated the call by hanging up, certainly it should have struck Samuel as odd that Claimant did not utter one word throughout the duration of the call. In retrospect, given Claimant's explanation of the manner in which she handled this third monitored call by Samuel and, a corroborative account from fellow employee Maria Loper that Claimant appeared to be experiencing technical problems with her equipment, such evidence lends credence to a claim that something may have gone awry with her equipment at the time the second call dropped in on Claimant's line. Given that this is a possibility, the Board cannot be assured, to the degree it seeks to be assured, that Carrier is correct in its determination that Claimant mishandled this second call through willful negligence on her part. Certainly, Claimant can be faulted for not taking any affirmative action in attending to an equipment problem and, in this respect we concur with Carrier's position that Claimant failed to provide quality service relative to this call. However, once the call was terminated, Supervisor Samuel should have immediately intervened the line and requested to meet with Claimant. We do not concur with Samuel's approach past this point of permitting Claimant wide latitude by sitting back and observing what she would do next and, we do not fully believe Samuel's explanation that she allowed Claimant this wide latitude so as not to get Claimant in trouble. We note that in Third Division Award 32206 where the Board heard and disposed of the claim having to do with a ten day actual suspension and a final warning imposed on Claimant for mishandling customer calls, Nunemaker, Samuel's Supervisor

in the chain of command, in spot monitoring Claimant's calls only monitored two calls before he determined Claimant was improperly placing calls on hold. In the case at bar we believe that the first two calls should have been sufficient to alert Samuel there was something amiss in the way Claimant was performing her job and that the problem, whatever it may have been, required her immediate attention. We find that to the extent Samuel failed to act decisively at a point in time action was demanded, Carrier was culpable in allowing Claimant to continue to engage in substandard performance of her job duties which later formed the basis for the charges against her which, in turn, resulted in the subject discharge here under review.

As to the circumstances surrounding the third call, we are convinced, based on the corroborative testimony of RSA Loper, that there existed a temporary glitch in Claimant's telephone equipment which prevented her from properly servicing this call. However, being a seasoned RSA, Claimant should have known that rather than just sit at her work station befuddled over the equipment problems she was experiencing and then asking a fellow RSA with less experience what should she do, she should have summoned help by hitting the assistance button on her key pad or placed an out call to an appropriate Management official. In not pursuing an appropriate response under the given circumstances, we find Claimant must accept responsibility for inadequate performance of her job duties. However, we further find that this failing on Claimant's part does not equate to the charge leveled against her that she failed to service this call as a result of willful negligence.

The Board concurs wholeheartedly with Carrier's position that the proper handling of customer calls is a critical component in its ability to provide quality service to its customers and its ability to maximize revenue from the sales that result from these calls. We further concur with Carrier's position that when RSA's are not providing quality service to its customers it necessarily impacts adversely on its operation and on its profitability as well. We therefore also concur in Carrier's position that where it is shown that RSA's are performing their duties in a substandard way and there are no extenuating circumstances present to explain away the deficiency in job performance, that severe disciplinary measures are warranted in order to address and correct the deficiencies. This is not to say, however, that in sanctioning the imposition of severe discipline we also sanction the undermining of progressive discipline. Severe discipline and excessive discipline are not one in the same and that is one of the reasons each case involving discipline must be decided on its own merits. In the case at bar, we find that certain extenuating circumstances were present, as discussed hereinabove, and that said

extenuating circumstances were not considered by Carrier in its decision to discharge Claimant. We also find, in the wake of our decision in Award 32206 to reduce Claimant's ten day actual suspension and final warning to a five day actual suspension and a five day deferred suspension with the elimination of the final warning, that the discharge action imposed here for Claimant's infraction of Section 8 of Carrier's "Special Instructions" to be excessive. However, given Claimant's failings as discussed hereinabove, we find that severe discipline is warranted. Accordingly, we rule to convert the five days deferred suspension to an actual suspension and, in addition, to convert the discharge to a suspension. Carrier is to reinstate Claimant without backpay, but with seniority unimpaired to her former RSA position, but not necessarily at her former work location unless any proposed change in work location presents an undue economic and/or undue social burden on Claimant. Reinstatement is to be effected as soon as practicably feasible after the adoption of this Award by the Board. If, perchance, Carrier fails to meet this deadline and Claimant is reinstated beyond the ordered time period and, the delay is not attributable to Claimant, Carrier shall be liable for paying Claimant her applicable pro rata rate for each day Claimant remains unemployed.

### **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 17th day of September 1997.**