

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 36754
Docket No. CL-36927
03-3-01-3-466

The Third Division consisted of the regular members and in addition Referee Robert Perkovich when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(Canadian National (former Grand Trunk
(Western Railroad Incorporated)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12760) that:

1. Carrier without a fair and impartial hearing unjustly dismissed Troy, MI Clerk T. L. Seidel effective July 13, 2000, as a result of hearing held on August 1, 2000, in which the transcript failed to prove the charges.
2. Carrier shall now reinstate Mr. Seidel to service, clear his record of all reference to this matter and pay him for any lost time as a result of this unjust dismissal.”

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.

The Claimant was employed in 1976 and, at all relevant times material herein, served on the Clerical Extra Board as a Crew Dispatcher. On July 13, 2000, his Supervisor observed him moving his computer mouse in an erratic fashion. Intrigued, the Supervisor looked at the Claimant's computer terminal and, in doing so, observed sexually explicit material on the Claimant's screen. Seconds later the Supervisor ordered the Claimant to close down the computer screen, an order with which the Claimant complied.

On July 14, 2000, the Carrier charged the Claimant with conduct unbecoming an employee and with violating General Rules 13, 14 and 15. Following the August 1 Investigation, and by letter dated August 9, 2000, the Carrier removed the Claimant from service for those violations.

Because misconduct of this type may have important liability ramifications for both the Carrier and the Claimant, the Carrier obviously had an obligation to address the Claimant's misconduct. Significant to our deliberations, we note that the offensive material was observable only for a short period of time and was not the subject of complaints from others. We also note that under the Carrier's disciplinary policy and procedures the Claimant has been free from discipline for more than four years. In fact, it appears that all prior demerits have been canceled pursuant to the terms of the Carrier's discipline policy. Thus, we look to determine whether there is a resolution to this case that will take into account the Claimant's prior record and years of service and still serve to acknowledge that he violated clearly enunciated Rules and that he must refrain from any similar behavior in the future.

Under the particular facts and circumstances of this case we conclude that the Carrier acted too harshly in dismissing the Claimant, who was clearly a senior employee with an unblemished record for the past four years. Therefore, his dismissal will be converted to a lengthy suspension. The Claimant will be reinstated with seniority and all other rights unimpaired, but without back pay on a last chance basis with regard to using Carrier equipment for viewing inappropriate material. In this

fashion we believe that his record and years of service are accounted for and his misbehavior is not condoned.

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 22nd day of October 2003.