

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 38101  
Docket No. CL-38449  
07-3-04-3-428**

**The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.**

**PARTIES TO DISPUTE: (**  
**(Transportation Communications International Union**  
**(CSX Transportation, Inc. (former Seaboard Coast**  
**( Line Railroad Company)**

**STATEMENT OF CLAIM:**

**“Claim of the System Committee of the Union (GL-13052) that:**

**TCU File 13.620 (28) SCL  
CSXT File 6 (03-0572)**

- 1. Carrier acted arbitrarily, capriciously and in a harsh and discriminatory manner, violating Rule 38 of the Agreement, when it disqualified Clerk Jo Ann Brooks, ID 621555, on Position 096R-162 and any similar position in the Pricing and Document Department following investigation conducted at Jacksonville, Florida, held June 9, 2003.**
- 2. As a result of the above-stated violation, Carrier shall clear Claimant's personal record of any reference to the investigation of June 9, 2003. The Carrier shall pay Clerk Brooks for any monies she has lost now or in the future for having to go to a lesser paying position, plus any other benefits she may lose due to the disqualification.”**

**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.

Prior to her discipline, Claimant JoAnn M. Brooks held Pricing and Document Analyst Position No. 0962-162 in the Sales and Marketing Department in Jacksonville, Florida. On May 30, 2003, the Claimant was notified to attend a formal Investigation to determine her responsibility, if any, for failing to follow instructions and failing to perform her duties.

The notification went on to state:

“As outlined in the job performance reviews in October 2002 and April 2003 you were counseled about your failure to perform your duties and follow instructions as they relate to your duties. Your May 2003 review indicates continued failure to follow the supervisor’s instructions and job performance.”

Following the Investigation which was held on June 9, the Claimant was notified by letter dated July 11, 2003, that she was removed from her assignment and instructed to make an immediate seniority displacement. In effect, the Carrier disqualified her from her position and any similar positions in the Pricing and Document Department.

The Organization appealed the disqualification on August 12, 2003. It alleged that the Carrier’s Investigation constituted a “fishing expedition” to find fault with

the Claimant's otherwise satisfactory performance. Among other things, the Organization objected to the counseling sessions that the Claimant's Supervisor held with her being incorporated into the charge letter, alleging that such action constituted "double jeopardy." More to the point, the Organization insisted that the Carrier had not proven its case. It noted that the Claimant was "showing improvement" and had a history of doing a good job in the Pricing Services Department. It pointed out that on at least three days, as evidenced by the Carrier's own Hearing Exhibit 4, the Claimant actually "exceeded job performance" requirements.

In its October 3, 2003 response, the Carrier pointed out that the Claimant's first counseling session occurred on May 22, 2002, at which time her backlog and returned errors were discussed. The Carrier stated that, while the Claimant showed some improvement in her work and was given additional time to train on pricing and switch suspense, she again failed to meet job standards and was counseled again on September 27, 2002. The Carrier contends that, despite additional training time as well as additional counseling and goal setting on October 31, 2002, and April 2003, the Claimant was still at only 73% of goal by May 2003, and "had not yet taken on 100% of the switch pricing/suspense work."

The Board reviewed all documentary and testimonial evidence. At the outset, we reject the Organization's contention that the Investigation was a "fishing expedition." The charges against the Claimant were specific and she had ample time to prepare and present an informed defense. Nor do we find that the Carrier improperly mentioned counseling either in the charge letter or during the Hearing. While counseling sessions are not considered discipline, they constitute notice that continued behavior (or absence of behavior) may result in discipline.

In this case, the Carrier afforded the Claimant considerable time to qualify on the position to which she had bid. For reasons not entirely clear in the record, the Claimant was able to meet job standards only sporadically, even after ten months of training, coaching and goal setting. There is no implication in the record that the Claimant was in any way neglectful or recalcitrant in her attitude toward the tasks associated with her position. Rather, it is apparent from the evidence presented at the Hearing that in other positions she has been competent at her job and a co-worker to be admired. However, she simply was not able to meet the

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standards of Pricing and Document Analyst Position No. 0962-162, even after what was by any objective assessment a generous opportunity to attain those standards.

Accordingly, we find no basis upon which to overturn the Carrier's determination that she be disqualified.

**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 21st day of February 2007.**