NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20239
Docket Number CL-20261

Joseph Lazar, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7310) that:

1. Carrier violated the Clerks' Rules Agreement at Chicago, Illinois by its action in assessing E. Scholtes an excessive penalty which was wholly unfair, unreasonable and without just cause.

2. Carrier shall be required to clear the record of employe Scholtes and compensate her for all time lost.

3. Carrier shall be required to pay on the total amount claimed in Item 2 above, seven percent (7%) interest commencing May 18, 1972 and compounded annually until the claim is paid in full.

OPINION OF BOARD: Grievant, with a seniority date of August 22, 1969, is the regularly assigned occupant of Comptometer Operator position in Seniority District No. 71 at Fullerton Avenue, Chicago, Illinois. On May 5, 1972, she was advised that charges were preferred against her "for being tardy for work on April 21 and 26, 1972", and on May 9, 1972, investigation on the charges were held. On May 17, 1972, she was "assessed with a 30 day actual suspension beginning May 18, 1972 and a 30 day deferred suspension with a one year probationary period." The present grievance contends that the penalty assessed "was harsh and excessive and out of all proportion to the offense involved." On April 21, 1972, Grievant was tardy two minutes, and on April 26, 1972, Grievant was tardy two minutes. The fact of tardiness on both dates is admitted and is not here in dispute. On April 21, she was delayed in traffic because of a car accident and was delayed because of parking difficulties resulting from street cleaning; and on April 26, she was delayed because of having "overslept" and also because of parking difficulties resulting from street cleaning. The four minutes' tardiness was deducted from her paycheck.

Our review of the record shows that at the conclusion of the investigation on May 9, 1972, the Grievant's representative stated: "She

"(Grievant) has requested that I enter a plea for leniency in hopes that your decision will not cause her any loss of wages."

The Carrier states that when considering the measure of discipline, it "took into consideration claimant's past record of being absent from work on no less than seventy-two days and tardy on no less than thirty-two separate occasions from January 1, 1970 through April 26, 1972." Claimant was given letters of reprimand on June 16, 1971 and on July 21, 1971, as well as verbal admonition. On February 1, 1972 she was given investigation on charges of tardiness on January 14, and January 21, 1972, and with being absent from work on January 24, 1972, for which she was assessed with a 30 day deferred suspension with one year probationary period beginning February 11, 1972. She was given an actual 30 day suspension, agreed-to by the Organization, as a consequence of the tardinesses of April 21 and April 26, 1972.

Tardiness in the railroad industry is a serious matter. It is a serious offense and in proper cases may result in dismissal from service. See Awards Nos. 7477 (Smith), 8424 (Lynch), 11528 (Webster), 15167 (Dorsey), and others. Management has the right and obligation to provide efficient and dependable railroad service and to expect disciplined and responsible performance of its employes. The Management would have been derelict in its responsibilities if it had failed to take into account Grievant's past record of tardiness in determining the amount of discipline that should be assessed. It would, of course, have been improper to consider the Grievant's past record in order to determine whether Grievant was to be found guilty, but this was not the case here. See, in this connection, Awards Nos. 16315 (Engelstein), 8504 (Daugherty), 9345 (Begley), 10876 (Hall), 13086 (Ables), 13308 (Kornblum) 17154 (McCandless), 9863 (Weston), 13684 (Coburn), 15184 (Mesigh), 16268 (Perelson), and others.

We have carefully considered the record to determine whether the investigation of May 9, 1972 was conducted consistent with due process, noting the investigation Officer's rulings on objections by Claimant's Representative. Although the hearing record cannot be said to be a model from the standpoint of letting in all potentially relevant information, we find that the record does not reflect any substantive unfairness or material prejudice to Claimant's rights. We are satisfied, in the light of Mr. Konczyk's testimony that he does not know "of any case where anyone has not been required to prepare a late slip when they report tardy for work" in his office (Q. 139), that there was no deliberate discrimination or malice or vindictiveness against Claimant.

We note that the Organization was agreeable to a thirty day actual suspension of Grievant growing out of the assessed discipline for tardiness and absence in January, 1972. In the light of the record

in this case, we find that the Carrier's imposition of discipline of 30 day actual suspension and 30 day deferred suspension for Claimant's tardinesses in April, 1972 (April 21, 26), was not excessive.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1974.

LABOR MEMBER'S DISSENT TO AWARD 20239,
DOCKET CL-20261 (Referee Lazar)

The majority, in Award 20239, states:

> ***"Although the hearing record cannot be said to be a model from the standpoint of letting in all potentially relevant information, we find that the record does not reflect any substantive unfairness or material prejudice to Claimant's rights."***

Examination of the hearing record demonstrates that on no less than ten occasions the Hearing Officer restricted the questioning of Claimant's Representative on the grounds that it was "not relevant." On fifteen occasions objections raised by Claimant's Representative concerning the conduct of the hearing were overruled. These two instances standing alone are sufficient to demonstrate that Claimant did not and could not receive a proper hearing. Thus, the discipline should properly be overturned by this Board. See recent Awards 19703 (Blackwell) 20014 (Lieberman) and 20148 (Sickles) involving the same Carrier for correct holdings.

I dissent.

J. C. Fletcher, Labor Member
5-23-74