

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20859  
Docket Number CL-20757

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and Station  
( Employes  
PARTIES TO DISPUTE: (  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7623) that:

1. Carrier violated the Agreement between the parties and abused its discretion when on November 16, 1973, Clerk H. B. Streeter was suspended from duty for thirty-five (35) days.

2. Carrier shall now pay Miss Streeter for all time lost as a result of this suspension, with all rights and privileges unimpaired.

OPINION OF BOARD: The incident out of which the claim arose occurred on August 27, 1973. At that time Claimant had been employed by Carrier as a clerk for approximately 6 months. On August 27, 1973 Claimant was assigned to work the second trick (3:00 to 11:00 p.m.) eastbound yard clerk job at Carrier's Homestead Yard. Claimant was not regularly assigned to this position but was working the assignment off the Extra Board on a holddown basis.

The record shows that Claimant developed car trouble on her way to work and at approximately 3:15 p.m. telephoned the crew caller at Homestead to inform him that she was late but would report as soon as possible. The crew caller reported same to the Yardmaster who conferred with his Supervisor and instructed the caller to get another clerk to cover if Claimant had not reported by 4:30 p.m. Claimant arrived at Homestead at 5:00 p.m. but another clerk had already been called and Claimant was relieved and sent home at 5:30 p.m. Following a hearing on September 4, 1973 Claimant on September 11, 1973 was assessed a twenty (20) day actual suspension and further notified that said suspension would actuate fifteen (15) days deferred suspension which was at that time pending on her record as a result of earlier disciplinary proceedings. The Claimant marked off duty on September 4, 1973 and returned to work on November 16, 1973 at which time the thirty-five (35) days actual suspension was imposed.

There is absolutely no question that Claimant is culpable as charged with reporting late for her assignment on August 27, 1973.

Moreover, Claimant admitted on the record that even if she had not had car trouble she was running late that day and would not in any event have reported at her starting time of 3:00 p.m. Thus the sole issues presented for us on this record are allegations by Petitioner of procedural irregularities and excessive discipline for the offense involved.

We have considered carefully each of Petitioner's objections. We are not persuaded in the particular facts and circumstances of this case that Claimant's rights under Rule 27 were prejudiced by the rulings or conduct of the Hearing Officer. Neither can we find evidence of bias or prejudgment nor a per se violation of procedural rights in the fact that the Hearing Officer was the same individual who signed the notice of hearing. As for the objection that the discipline was untimely imposed the record shows supra that Claimant marked off until November 16, 1973, thereby obviating any earlier imposition of the penalty. Finally, we have reviewed the question of quantum of discipline assessed. The record shows that Claimant, a six-month employee had already incurred two deferred suspensions as of August 27, 1973 for failure to protect her assignment. In light of this discipline record and the fact that Carrier had imposed progressive discipline of five and ten days for the earlier tardiness we cannot find the discipline assessed herein, including the activation of the earlier deferred suspensions, to be arbitrary or excessive. In all of the circumstances the claim must be and is denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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

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 14th day of November 1975.