

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21559  
Docket Number CL-21406

David C. Randles, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employees  
(  
( Robert W. Blanchette, Richard C. Bond and  
( John H. McArthur, Trustees of the Property  
( of Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-7963, that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 6-A-1, when it assessed discipline of "Dismissed in all Capacities", later reduced to a suspension from May 15 to June 10, 1974, on Claimant, Miss Mary Christmas, Clerk in the Carrier's Customer Accounting Department in Philadelphia, Pennsylvania.

(b) Claimant, Mary Christmas' record be cleared of the charges brought against her on May 17, 1974.

(c) Claimant, Mary Christmas be compensated for wage loss sustained during the period out of service.

OPINION OF BOARD: Claimant Mary Christmas entered the service of the Carrier as a clerk at Philadelphia, Pennsylvania, on June 19, 1967. As a result of alleged insubordinate conduct during the afternoon of May 15, 1974, claimant was removed from service that day. By a written notice dated May 17, 1974, claimant was instructed to attend an Investigation on May 21, 1974, in connection with the following charge: "Insubordination, disobeying order of superior and creating disturbance both prior to and subsequent to the insubordination." The Investigation was held; claimant was present and represented. As a result of the Investigation, the claimant was dismissed from service; however, said dismissal was appealed to the Superintendent of Labor Relations who, by letter on June 10, 1974, extended leniency to the claimant reducing the discipline of dismissal to a suspension. The discipline of suspension was appealed by the Organization which contends that the charge did not comply with the criteria of Rule 6-A-1 which requires said charges to be explicit. The Organization notes in this regard that the charge is general and it does not even note the date and time of said insubordination.

The Organization further contends that the hearing officer did not make the finding which in and of itself invalidates the discipline, for it is a denial of due process.

The Carrier asserts that there is substantial evidence in the record which establishes the claimant's guilt of insubordination. The testimony of the claimant's supervisor as well as the testimony of her supervisor's superior support the fact that the claimant was insubordinate. Each of these Carrier witnesses at the Investigation testified as to his first-hand direct knowledge of said insubordination. A third witness to the event heard the claimant tell her supervisor "to get off her back" together with some strong epithets. The claimant herself blamed the trouble on her supervisor; however, such insubordination remained unchallenged in the record.

It is a general principle of labor relations and of the arbitral process that employees must obey their supervisor's order (except in situations affecting health and safety) and grieve later. The claimant did neither.

The Organization contends that the charge was not explicit which produced a situation at the Investigation which deprived the claimant of due process in that not knowing the charge, she was unable to prepare a defense.

The Board could sustain the claim if this were the only reference to the act of insubordination; however, part of the record is the letter from her superior, written on the day of her insubordination and hand-delivered to her. The body of said letter is as follows: "Notification is hereby given that you are held out of service beginning May 15, 1974 - 4:00 P.M., in connection with insubordination by disobeying a direct order of your Supervisor. You will be advised promptly with regard to any further action that will be taken." (Signed by R. E. Semerad, Manager-General Credit and Collection) This letter, together with the Notice, leaves no doubt in the opinion of the Board that the claimant knew the exact offense and the date on which it occurred.

Relative to the allegation by the Organization that the hearing officer did not make the determination of guilt or innocence, there is no article or rule within the Agreement which prescribes who shall conduct the hearing or that the official conducting the hearing must be the one and the same person who makes the decision imposing discipline. This fact is supported by many awards of this Board.

(Award 13383 - Hall, being one example.) If there is no reference in the Agreement as to who shall make the decision regarding discipline, then this Board may not stipulate that the Agreement was violated.

The claimant in this case was afforded due process, including Notice and representation. The record of the Investigation substantiates the charge of insubordination.

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 Employees involved in this dispute are respectively Carrier and Employees 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

That the Agreement was not violated.

A W A R D

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1977.