

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21838  
Docket Number CL-21715

John P. Mead, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Chicago, Milwaukee, St. Paul and Pacific  
( Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-8149, that:

1. Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it failed to afford employee C. Mascolo a fair and impartial investigation.
2. Carrier's action in suspending employee C. Mascolo from actual service for a period of thirty (30) days was without proper cause when it failed to prove its charges and therefore is arbitrary, capricious, unfair and unreasonable.
3. Carrier shall now be required to clear employee C. Mascolo's record and compensate her for all time lost.
4. Carrier shall be required to pay, on the total amount claimed in Item 3 above, seven percent (7%) as interest commencing on March 8, 1975 and compounded annually until this claim is paid in full.

OPINION OF BOARD: This case involved a dispute over a question as to whether or not Claimant was (1) late returning from lunch, (2) one minute late, or (3) two minutes late. The immediate attempts to resolve the question and "make" Claimant sign in "properly" resulted in a brief oral exchange between Claimant and her "front line" supervisor. The "front line" supervisor involved another supervisor and resulted in Claimant changing the "sign-in sheet" to show that Claimant arrived two minutes late rather than one minute late.

Given the usual guidelines of this Board relative to reviewing discipline cases, we find that there was testimony which, if believed, supported the hearing officer's finding of guilt.

Claimant, although disagreeing with the supervisor, should have complied with her order to "sign in late" and grieved later if she still felt wronged by such order. On the other hand, the order to "sign in late" was not at all clear and we are, in view of the total record,

constrained to point out that supervisors should conduct themselves in such a way that their manner of giving orders might not tend to provoke their subordinates, and those orders should not only be reasonable but also quite clear so as to eliminate misunderstandings.

In any event, it clearly appears to the Board that a relatively simple procedure designed to help insure punctuality of employes escalated into a most unfortunate oral confrontation which resulted in Claimant's being assessed a thirty-day suspension.

In cases where there is testimony in the record which, if believed, supports Carrier's finding of guilt, this Board then determines whether the discipline assessed is commensurate with the "proven" offense. In this case the quantum of proof just barely suffices to hold Claimant culpable. In view of the entire record, we find that the assessment of a thirty-day suspension was too severe and, while we do not hold such to be arbitrary or capricious, we do believe that it amounts to an abuse of discretion.

We therefore order that the discipline assessed be reduced to a five-day suspension with Claimant to be paid for all time lost beyond the first five days of the original thirty-day suspension. In all other respects the claim 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 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

The discipline was excessive.

A W A R D

Discipline reduced to a five-day suspension per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of January 1978.