



NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22152  
Docket Number CL-21936

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Grand Trunk Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
(GL-8321), that:

1. Carrier violated the Agreement when it failed to give Miss C. Seeley a fair and impartial hearing, and in abuse of discretion suspended claimant from service for 59½ days.

2. Carrier shall compensate claimant for all wages lost during suspension from January 29, 1976 to March 28, 1976.

OPINION OF BOARD: Claimant was notified to attend an investigation concerning an asserted insubordination and, subsequent to the investigation, she was assessed a 59½ day suspension.

The asserted insubordination arose concerning Carrier's questions to the employe regarding alleged delays in performing required duties, and on the day in question, the instant dispute erupted over a failure to perform certain filing. The Supervisor asserts that Claimant refused to perform the work whereas the employe insists that she did not refuse, but only stated that time did not permit her to accomplish the function.

When Claimant was questioned regarding the incident, she requested that her local union representative be summoned, but that request was denied. At the end of that discussion, she was suspended from service for insubordination.

The Claimant's version of the events are summed up in the following excerpt from the investigation:

". . . At this time, he proceeded into wanting to know why I was making a big deal over doing the filing. At this time, I requested the presence of Floyd Walters. Mr. Wilson's reply was that there was no need for Mr. Walters to be present because we were only going to have a discussion on the matter. Then he proceeded to tell me about the work overload and how at certain times of the year there is a work overload, and they have to call upon the other employees in the office to share in cleaning up this work overload. I stated that I felt that I was doing my share of the work, the overload of the work. I was doing various typing; I was opening, stamping and distributing the mail, and ordering supplies for the office. At this time, Mr. Wilson proceeded to tell me that we were all here for an eight hour day and it should not make any difference as to what our workload dealt with, and that he felt, with the type of job that I was on, that I would not mind doing the other duties that are given to me. He felt that it would break up the monotony of my job. I agreed with this statement but explained to him that I did not feel that I should have to do the filing seeing as I was doing the typing, the mail and ordering supplies. At this point Mr. Wilson instructed me that filing is other duties as assigned. I told him that other duties as assigned was duties pertaining to the particular job, and most supervisors use this as a crutch. I got a little bit upset and started crying. I stated that if he could find someone else in the office to do the typing, the opening and distributing of the mail and ordering of the supplies, then I would do the filing. I also stated that I did not mind doing the filing of the correspondence and A.F.E. files, but I felt it was unfair to do Janet's filing. At this time I again requested Floyd Walters be present and told Mr. Wilson that Floyd could be reached on extension 230, which Mr. Wilson ignored and stood up and told me as far as he was concerned I was insubordinate and that I could leave the premises . . ."

The Organization does not suggest that a union representative is required at every employe interview, but it contends that Carrier should comply with an appropriate request when the employe "reasonably believes that discipline will result from the interview."

Carrier argues that the evidence of record shows a wilful insubordination in that Claimant refused to comply with specific instructions.

Although the alleged insubordination was limited to a specific time, i.e., 11:45 a.m. on January 29, 1976, and was aimed at a specifically named Supervisor, the 10-minute meeting concededly dealt with the general topic of work performance. The parties disagree as to the context of the discussions and, in our review of the record as a whole, we have a significant doubt as to whether Carrier's evidence shows a wilful insubordination or merely a heated exchange as to basic work content, job description, etc.

It is not this Board's function to substitute its judgment for that of Carrier, but we are constituted to assure that a Carrier establishes its case by a substantive showing. Here, we are unable to find such a showing with any degree of certainty.

Quite possibly, had the Supervisors in question acceded to Claimant's request for Union representation under this type of a circumstance, the matter may have been disposed of short of submission here. But, we do not hold that a Union representative must be present at every meeting. Certainly, a Supervisor does have the right to meet with an employe without a Union representative present, according to the circumstances of the individual situation.

**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 herein; and

That the agreement was violated.

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Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1978.

