

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22187
Docket Number CL-21989

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(Consolidated Rail Corporation
((formerly The Chicago River and
(Indiana Railroad Company)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8349) that:

(a) Carrier violated Rule 36 of the applicable December 1,
1949 Rules Agreement, as reprinted January, 1958, when:

- (1) It attempted to substitute a January 13, 1975
investigative proceeding for the "hearing" by
Rule 36, and
- (2) It administered discipline as a consequence of
said investigative proceeding to become effective
beyond the time limit prescribed by paragraph (h)
of Rule 36.

(b) Carrier acted in an arbitrary and prejudicial manner
when it considered the record of January 13, 1975 investigative pro-
ceeding as support for the administration of discipline in the form of
a five (5) day suspension.

(c) Carrier now be required to expunge the here challenged
disciplinary action from the record of Clerk, Miss Elizabeth Koteff
and compensate her for the loss of earnings sustained as a consequence
of said improper suspension.

OPINION OF BOARD: The Carrier contends that the Organization did
not comply with Circular No. 1 of the NRAB, when
notifying the Board that a dispute was being filed. The Carrier
contends the Notice of Intent was not given to Carrier's highest
designated officer, Mr. Dutrow. We disagree. In rebuttal, the
Employes furnished copies of a notice to BRAC general chairmen from

the Vice President-Labor Relations of Conrail that Mr. J. R. Walsh is designated, for the purposes of the Railway Labor Act, as final appeal officer or chief operating officer and listing Mr. S. D. Dutrow as Manager of Labor Relations of the Chicago and Fort Wayne Divisions of Conrail, and a letter on Conrail stationery where Mr. Dutrow, as Manager of Labor Relations, agreed to time limit extensions. The record contains no evidence of a Carrier notification to the Organization that Mr. Dutrow rather than Mr. Walsh was the proper official of Conrail to notify of the Organization's intent to file an ex parte submission on this matter which originated on the former Chicago River and Indiana Railroad, a railroad which became part of Conrail on April 1, 1976.

The Claimant, Miss Elizabeth Koteff, was a Clerk in the General Auditor's Office on the former Chicago River and Indiana Railroad Company. Her date of hire was February 4, 1966. The Claimant was notified by letter of January 8, 1975, to attend an investigation on January 17, 1975, "to develop the facts and to determine your responsibility, if any, in the improper adjustment of net pay received by you during the 1974 months of August, September, October and November." By letter dated January 20, 1975, the Carrier notified the Claimant that she had been found guilty as charged and she was assessed a 5-working day-suspension.

It is clear that the Organization on the property sought to have the discipline set aside, in part, on the basis that the adjustments in net pay were at all times sanctioned by the supervisor. See General Chairman's letter of February 25, 1975. In its Statement of Claim the Organization asserts:

"(b) Carrier acted in an arbitrary and prejudicial manner when it considered the record of the January 13, 1975 investigative proceeding as support for the administration of discipline in the form of a five (5) day suspension."

Clearly the Organization challenged the merits of the discipline on the property, in the Statement of Claim, and in its Submission to this Board.

The Carrier's Auditor of Disbursements, Mr. O. W. Sproesser testified on the matter of authority and procedures, as follows:

"...Our procedures permit a Code Clerk to make adjustments to the register of payroll abstracts only assigned to him. Under no circumstances should a Code Clerk alter anything on anyone elses register unless instructed to do so by the Head Code Clerk.

In this case, Miss Koteff changed the register of the General Auditor's Office Payroll, a payroll she is not handling nor even permitted to view. Under normal circumstances, register corrections like this on the General Auditor's Payroll can only be made by Mrs. Fluehr. The Chief Clerk, Mrs. Fluehr and the Head Key punch Operator, are the only ones who are permitted to handle the office payroll. If adjustments are to be made, they must be made through the Head Code Clerk."

The Hearing Officer questioned Mr. Sproesser as follows:

- "Q. What authority does the Head Code Clerk have regarding adjustments?
- A. The Head Code Clerk runs the department and does what can be done concerning adjustments and sees that they are properly made.
- Q. Can anyone make adjustments on payrolls?
- A. They can only make adjustment on the payrolls that are assigned to them by the Head Code Clerk."

Mrs. Fluehr, the Head Code Clerk, testified as follows in response to questions from the Hearing Officer:

- "Q. What comments can you give involving this matter?
- A. When this first happened, and I questioned the register correction, Miss Koteff said this was her pay. She said she was off due to illness and that she would receive a smaller paycheck, and that she was deducting \$40.00 off of her Federal Income Tax and increasing her net take home pay. And then she said it was okay, because she did it all the time.

"Q. Did you check it out at the time?

A. No, I didn't

Q. Did you call it to the attention of Management?

A. No, I didn't. The reason I never brought it up to Management at the time, I don't know. I didn't bring it to anyone's attention because it was her money."

Mrs. Proc questioned Mrs. Fluehr, the Head Code Clerk, as follows:

"Q. Did you have Miss Koteff handle this all by herself?

A. No, I took register correction to keypunch and had it keypunched and then sent it over the transmitter."

Auditor Sproesser questioned Mrs. Fluehr as follows:

"Q. I don't understand how you could permit these changes. You are in charge of the department, and of this payroll in particular. Do you permit anyone to change their net pay without questioning it?

A. No."

The record is clear that Mrs. Fluehr, the Head Code Clerk, runs the department and is responsible for adjustments, and is responsible to see that they are properly made. She took the correction in the instant case to keypunch and had it keypunched and then sent it over the transmitter. Auditor Sproesser viewed this as the Head Code Clerk permitting the changes: "I don't understand how you could permit these changes."

It is clear that the Claimant's supervisor had knowledge of and assisted in the adjustments made to the Claimant's paychecks. And, for a supervisor to permit the adjustments to take place, and thereafter for the Carrier to issue a disciplinary suspension to the Claimant for these same adjustments is an arbitrary exercise of Management's right to discipline. Certainly the Carrier had other means available to correct the situation.

We shall sustain the claim.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

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

