

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22191
Docket Number CL-21751

Herbert L. Marx, Jr., 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-8164, that:

1. Carrier violated the Clerks' Rules Agreement at Chicago, Illinois when it assessed discipline of fifteen days deferred suspension with one year probation against employee Bertha Albritton without proving the charges alleged; this action being without proper cause and therefore arbitrary, capricious, unfair and unreasonable.

2. Carrier shall now be required to clear employee Albritton's record of the charges made against her, cancel the discipline assessed and if loss of time results meantime, compensate her for all time lost.

OPINION OF BOARD: This claim, involving Claim Investigator Bertha Albritton, arises out of her participation in a disciplinary proceeding involving another employee, Cheryl Mascolo. To dispose of the Albritton claim, it is necessary first for the Board to cite several of the facts arising from the investigation of Mascolo concerning her alleged actions on July 1, 1974, as follows:

1. The particular office involved has an official lunch period from 12:30 p.m. to 1 p.m. Employees are required to sign a register upon their return from lunch.

2. If employees return from lunch between 1 p.m. and 1:10 p.m., they are permitted a grace period and may sign the register by writing "1 p.m." Thus, they do not record their actual time of arrival, but use the agreed-upon "1 p.m."

3. If employees return from lunch after 1:10 p.m., they may sign the register with a time ten minutes earlier than their actual arrival time; thus, arrival at 1:12 p.m. is noted as 1:02 p.m. Again, employees do not record their actual time of return from lunch.

4. It is uncontroverted that Mascolo originally wrote "1 p.m." in the register when she returned from lunch on July 1, 1974.

5. The record of Mascolo's investigative hearing is reasonably clear that the time she actually returned from lunch was 1:12 p.m. (though this is a matter of a separate claim and need not be finally resolved here).

As to Albritton's part, she submitted a notarized statement in defense of Mascolo which included the following:

"Cheryl [Mascolo] came from lunch and signed in at 1:00 p.m. and then went to her desk."

After an investigative hearing concerning this statement, Albritton was given a fifteen-day deferred suspension with one-year probation period for "presenting false information in your notarized statement."

The Board finds the Carrier's charge of false statement simply not proven.

Albritton's statement can be given two interpretations:

1. That Mascolo wrote "1 p.m." in the register, regardless of what time she actually arrived. This is, according to the testimony and evidence, a true statement.

2. Mascolo returned from lunch at 1 p.m. According to the testimony in the Mascolo hearing, this is not a true statement.

The Carrier puts interpretation #2 on Albritton's statement, but there can be no clear finding that Albritton did not intend the meaning of interpretation #1 to her statement.

Proof is lacking of which interpretation was intended. The discipline is therefore improper.

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;