

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22237
Docket Number CL-22147

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8455) that:

1. Carrier violated the Agreement between the parties when on March 1, 1977, it dismissed from its service Agent-Telegrapher E. R. Holtzman, Paris, Texas, without sufficient cause and without a fair and impartial hearing as required by Article IX of the Agreement.

2. Carrier shall now compensate Mr. E. R. Holtzman for all time lost and reinstate him to the service of the Carrier with seniority, vacation and other rights unimpaired in accordance with Article IX (6) of the Agreement. This claim is subject to future wage adjustments and to any benefits which claimant might lose under insurance coverage because of Carrier's action in this matter.

OPINION OF BOARD: Claimant herein was dismissed from service effective March 1, 1977 for violation of Carrier rules, allegedly for failure to promptly transmit information concerning car movements on various dates between November 10, 1976 through January 10, 1977. By agreement, Claimant was restored to duty on April 27, 1977 with the understanding that the Organization would progress its claim for payment for time lost during the suspension. Therefore, this claim deals with a suspension of some seven weeks.

Two significant points were raised by Petitioner in this matter. One dealt with the fact that Claimant could not know of his omissions until the following day since he was not on duty when the messages were received late in the afternoon. From this it was apparent, claimed the Organization, that he could not enter the missing data until the following day. As a further point, Petitioner contended that Claimant committed fewer errors than a majority of employees at other locations on the same seniority roster, according to computer read-outs. Other employees were not disciplined as Claimant was in this case.

Carrier argues that there were no procedural errors which adversely affected the substantive rights of the Claimant. Further it is pointed out that Claimant was not charged with committing errors in information he had transmitted and entered into the computer, but for failing to transmit at all.

An examination of the transcript indicates that there was sufficient evidence, including Claimant's admission of at least some of the incidents, to warrant Carrier's conclusion as to his guilt. There remains, then the question of the quantum of discipline imposed. The record indicates that Claimant had received twenty demerits on October 12, 1976 for a related failure to transmit information. He had two other relatively minor infractions on his record in earlier years.

While we may not tamper with discipline imposed by Carrier unless it is either arbitrary, capricious or discriminatory, we are also concerned with whether the discipline is consistent with the seriousness of the offense. It is well known that discipline is primarily corrective in nature (except for the most serious infractions requiring punitive measures). In this dispute dismissal was indeed arbitrary and capricious in view of the nature of the infraction; we also are of the opinion that the seven weeks' suspension was excessive as well. For this reason, the penalty will be reduced to a thirty calendar day suspension and Claimant will be made whole for loss of earnings in the interim.

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, in part, as indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November 1978.