

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22585
Docket Number CL-22611

John J. Mangan, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Norfolk and Western Railway

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8612) that:

1. Carrier violated the provisions of the current work rules agreement extant between the parties particularly Rule 27, when on July 27, 1977, Clerk J. P. Murphy was arbitrarily and capriciously assessed a fifteen (15) day suspension from the service of the Carrier in a flagrant abuse of discretionary authority.

2. Claimant shall now be paid eight (8) hours pay at the pro rata rate of his position for each day of his suspension.

3. Claimant's service record shall now be expunged of all references relating to charges dated June 21, 1977.

4. In addition to the above, Claimant will now be paid interest on the monies wrongfully denied him in the amount of one per cent (1%) monthly, compounded annually on the anniversary of the claim.

OPINION OF BOARD: Claimant Murphy, while assigned as a Machine Operator at Carrier's Bison Yard, Buffalo, New York, was ordered to appear for an investigation on the following charge:

"You are hereby charged with failure to discharge the duties of your regular assignment of Machine Operator #2, 7:59AM to 3:59PM, when at approximately 8:35 AM, June 18, 1977, IBM Room, Bison Yard, Buffalo, N.Y. you failed to answer the Data Control telephone in your assigned work area and instructed a fellow employee not to answer this same phone call. You are, also, charged with, during this same period of time,

"displaying an attitude of disloyalty to your employer when in response to Supervisor L. J. Silver's question 'You are an employee of this company, are you not', you answered 'Not really.'"

As a result of the evidence adduced at this investigation, claimant was given a fifteen (15) day suspension from service.

From our review of the entire record in this case, we can conclude only that all of claimant's procedural and substantive rights have been protected. The hearing record contains more than substantial evidence to support the conclusion that claimant did, in fact, conduct himself in a cavalier manner in regard to both the handling of the unanswered telephone episode as well as his demeanor toward Supervisor Silver. This Board as an appellate review body, cannot say that the discipline as assessed was capricious, arbitrary or excessive. We will deny the claim in its entirety.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.