

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22969
Docket Number CL-22940

Martin F. Scheinman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8811)
that:

1. Carrier acted in an arbitrary, capricious and unjust manner and violated the agreement between the parties when by letter dated November 8, 1978 it suspended Clerk Jessie Thompson from the service of the Carrier for a period of 30 days beginning November 8 through and including December 7, 1978.

2. In view of the foregoing arbitrary, capricious and unjust action of the carrier, it shall now be required to:

- (a) Restore Clerk Thompson to service of the Carrier with all seniority, vacation and other rights unimpaired.
- (b) Pay Clerk Thompson for all time lost commencing with November 8, 1978 and continuing through December 7, 1978.
- (c) Pay Clerk Thompson interest at the rate of 10% on the amount claimed under (b) above.

OPINION OF BOARD: Claimant, J. Thompson, after investigation, was suspended 30 days for negligence and indifference to duty. Claimant was regularly assigned as Crew Dispatcher (Galler) at Springfield Terminal. A part of Claimant's job was filling Conductor vacancies on the Fort Smith Subdivision.

On October 11, 1978, Claimant was instructed to call a crew for a work train for the Fort Smith Subdivision. There were no Conductors available to protect this work train. Therefore, Claimant had to call an emergency Conductor from the Brakeman's board to fill the vacancy.

The Organization contends that Claimant is not guilty of negligence or indifference to duty. Rather, it asserts that Claimant merely misinterpreted the rules. The Organization also raises certain procedural

arguments, e.g., that the decision was not rendered within seven days after the completion of the investigation and that a fair and impartial investigation was not provided.

We will first address the procedural objections raised by the Employees. The record indicates that a decision was rendered within seven days as required. It is undisputed that the investigation was completed on November 2, 1978. It is clear that the decision was sent to Claimant on November 9, 1978 - a period of seven days. In fact, the Employees admit in its letter of November 16, 1978 (Carrier Exhibit "D") that the answer was postmarked on November 9th. Therefore, we must reject the Organization's argument that the decision was untimely.

The Employees also argued that a fair and impartial hearing was not provided because the conducting officer did not assess the penalty. This contention must be rejected. There is nothing in rules of the Agreement which requires who must actually assess the penalty. See Award No. 13383.

In short, we are convinced that each of the Organization's procedural arguments are without merit.

We will next turn to whether Claimant is guilty as charged. A review of the transcript convinces us that Carrier met its burden of establishing that Claimant is guilty of negligence and indifference to duty. The investigation clearly established that Claimant failed to properly administer her duties as a Caller. Claimant was fully aware of Stoviak's availability; she also was aware that he was senior to the man called. Her action on October 11, 1978 was completely inappropriate.

The final question that remains is the appropriate discipline. Claimant has received numerous letters for poor performance of her duties. In addition, Claimant was assessed a ten (10) days' suspension for mishandling a Hostler. This Board recently affirmed that discipline. Award No. 22905.

Given the proven offense as well as Claimant's past record, we can see no reason to set aside the discipline imposed. The claim is denied.

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;

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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 28th day of August 1980.