NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 23855
THIRD DIVISION Docket Number SG-24051

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(Consolidated Rail Corporation

STATEMENT OF CLAIM: "Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Consolidated Rail Corporation (former Lehigh Valley Railroad Company).

On behalf of Assistant Signalman Lorna L. Day, whose dismissal November 9, 1979, was reduced to a 30-day suspension, for pay for all time and benefits lost, and that all reference to this matter be stricken from her records." (System Docket 1439)

OPINION OF BOARD: Claimant, Assistant Signalwoman Lorna L. Day, after investigation, was suspended thirty (30) days as a result of an accident in a leased truck. The accident took place on October 31, 1979. On November 2, 1979, Carrier notified Claimant to appear for an investigation regarding an:

> "Accident with Company Vehicle HM4831 on October 31, 1979 at 12:30 PM, in violation of Rule L of Rules for Conducting Transportation (in part) Rule L: In case of danger to or loss of Company's property, from any cause, employes must unite to protect it.
>
> Abuse, misuse, defacing of or deliberate damage to or destruction of Company property, tools or equipment is prohibited."

As a result of the investigation Claimant was initially discharged from service. This penalty was later changed to the thirty (30) day suspension at issue here.

The Organization asserts that Carrier failed to establish that Claimant was guilty as charged. It also argues that Carrier discriminated against Claimant when it assessed a greater penalty then that assessed a male employe for a similar incident.

The evidence conclusively establishes that Claimant is guilty as charged. She was operating the vehicle when the vehicle turned on its left side injuring the vehicle and its contents. During the investigation, Claimant essentially admitted her responsibility for the accident. Even if she did not, it is apparent that the Conducting Officer resolved the credibility issue against Claimant. The record affords us no basis to overturn that conclusion.

Thus Claimant subjected herself to appropriate disciplinary action. The only question that remains is the appropriate penalty.

This Board has consistently held that the discipline imposed should not be overturned unless it is unreasonable. Here, the proven offense is serious.

However, it is fundamental that discipline must be meted out in a consistent and evenhanded fashion. The record indicates that Carrier imposed a five (5) day suspension to another employe involved in a similar incident a year earlier. Therefore, we are persuaded that the penalty imposed to Claimant is arbitrary and capricious. It is unreasonably severe.

We will reduce the discipline to five (5) days. Claimant shall be made whole for the period of her improper suspension. Her personnel record shall also be revised accordingly.

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 Employes involved in this dispute are respectively Carrier and Employes 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 discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 28th day of April 1982.