

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24082
Docket Number CL-24312

Tedford E. Schoonover, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9521) that:

1. Carrier violated the Clerks' Rules Agreement when it arbitrarily suspended Mrs. M. J. Germann from its service for a period of thirty (30) days following investigation, without giving reasonable consideration to the testimony given and the mitigating circumstances involved. (Carrier File - C).

2. Carrier's action was arbitrary, unjust and unreasonable.

3. Carrier shall now be required to compensate Mrs. Germann for all wage losses sustained due to Carrier's arbitrary and unreasonable action.

OPINION OF BOARD: Mr. J. M. Gatlin, by a letter dated December 27, 1979, was cited for an investigation to be held at 9:30 A.M. on January 15, 1980. Claimant, M. J. Germann, was advised, by copy of the same December 27, 1979 letter, to attend the investigation as a witness. Claimant did not attend the hearing because she admittedly forgot to do so. However, Mr. Gatlin waived the hearing, and by a letter dated January 15, 1980, all parties were advised that the investigation was cancelled.

On January 16, 1980, Carrier cited Claimant for an investigation for "your alleged failure to comply with instructions issued you to attend an investigation, as a witness..." It is substantiated that Claimant did not receive said notice until January 21, 1980, and notified her representative the next day. A request for a postponement and for the presentation of witnesses was made by letter dated January 22, 1980 to the Carrier. By a letter dated January 24, 1980 the Carrier denied the requested postponement and issued letters to the requested witnesses to attend the investigation on January 25, 1980. Only one witness appeared, and after the hearing Claimant was assessed a 30-day suspension which is the subject of the present claim.

While the handling of the matter by both parties troubles this Board, the matter before us is resolved by consideration of the substantiated evidence before us.

There is no doubt on this record that Claimant was notified, and so understood the notification, that she was to be a witness at a disciplinary hearing scheduled for January 15, 1980 at 9:30 A.M. Claimant did not comply with the instructions.

The charge that claimant failed to comply was substantiated by claimant's own admission that she forgot.

In view of the circumstances on both sides we find the 30-day suspension excessive. We will reduce the assessed discipline to a one-day suspension. Such action will impress on the claimant the responsibility of an employee to comply with instructions properly issued. It will also impress upon the Carrier that the requirement for a fair and impartial hearing includes avoidance of arbitrary and capricious action in the matter of granting postponement when requested on reasonable grounds.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

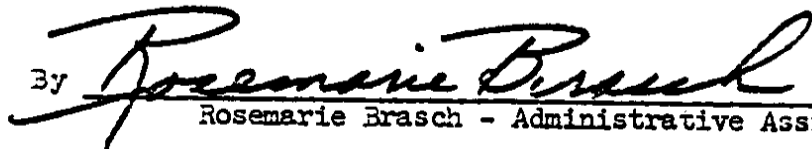
A W A R D

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 - Administrative Assistant



Dated at Chicago, Illinois this 5th day of January 1983.