

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24799  
Docket Number CL-24925

Eckehard Muessig, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employes  
(  
(Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9710)  
that:

(1) Carrier violated the Agreement between the Parties when, on May 14, 1982, it imposed discipline of thirty (30) days' suspension from service upon extra employee Miss Lavon D. Jones and, four (4) days later on May 18, 1982, did thrust the penalty of "dismissal" from Carrier's service upon Miss Jones as a result of two (2) formal investigations conducted on the dates of May 4 and 6, 1982, and,

(2) As a result of such improprieties, Carrier shall now be required to compensate Lavon D. Jones eight (8) hours' pay beginning May 17, 1982, and continuing each subsequent date until restored to Carrier's service, and that Miss Jones' service record be cleared of the notings incident to the suspension and dismissal suffered therefrom.

OPINION OF BOARD: The Claimant, an extra employe, was notified to attend an investigation on a charge that she had failed to protect her assignment.

Subsequent to the investigation, she was found guilty and dismissed from the service of the Carrier. Prior to the incident that led to this discharge, the Claimant had been disciplined on five (5) other occasions, all related to failure to protect her assignment.

As a threshold issue, the Organization raises a due process procedural objection, primarily related to the hearing and investigative procedures which occurred on the property. While the Organization's contentions in this regard are not without merit, the Board finds that the Carrier's actions were not violative of the due process provisions of the controlling Agreement.

With respect to the merits, there is evidence to support the Carrier's finding of guilt. However, after having so found, the Carrier carries an obligation to weigh in a reasonable manner all of the facts and circumstances relative to the incident under dispute, including, for example, the Claimant's employment status as an extra, the nature of the offense, the negligible impact that it had on the Carrier, the Claimant's work record on the job, as well as what may be considered reasonable extenuating factors immediately prior to the Claimant's last absence before she was discharged. On balancing these elements and factors, the Board considers permanent dismissal to be an excessive discipline. Having thus found, the Claimant shall be restored to service with seniority rights unimpaired, but without any compensation for time lost while out of service.

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

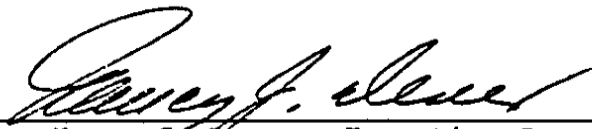
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of April, 1984

