

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24972
Docket Number CL-24992

Hyman Cohen, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE: (
(Terminal Railroad Association of St. Louis

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9763) that:

1. Carrier violated the Clerks' Rules Agreement when it arbitrarily suspended Mr. C. D. Hilkey from its service for a period of fifteen (15) days following investigation, without giving reasonable consideration to the testimony given and the facts and circumstances involved. (Carrier's File-C)
2. Carrier's action was arbitrary, unjust and unreasonable due to the circumstances involved.
3. Carrier shall now be required to compensate Mr. Hilkey for all wage losses sustained due to Carrier's arbitrary and unreasonable action; and shall also be required to expunge the investigation transcript from his personal file.

OPINION OF BOARD: The Claimant has been in the Carrier's service since November 26, 1981. On February 16, 1982, the Claimant was an Extra Board Clerk and the Carrier assigned him to work the Crew Clerk No. 3 position at the Carrier's facility located in Madison, Illinois. Among his duties on that day were to "prepare, mark and handle" the Engineer's and Firemen's Board in order to fill positions on various yard engine assignments on a shift basis. After an investigation which was held on February 25, 1982 the Claimant was suspended for fifteen (15) days for improperly marking up three (3) Engineers, and three (3) Firemen on February 16, 1982 on separate assignments, for which they were not scheduled to work. Claimant's improper action, the Carrier indicated, resulted in four (4) days of penalty pay.

It is undisputed that the Claimant improperly marked up jobs on the Engineer's Board on February 16, 1982, that were not scheduled to be worked. A question is raised as to whether the Claimant was qualified for the position of Crew Clerk No. 3 in the Crew Board Room. The record discloses that the Claimant had a break-in period of six (6) days in April or May, 1981 in the Crew Board Room and had worked one (1) day in December, 1981. Even if it can be said that due to his limited experience as a Crew Clerk the Claimant was not qualified to fill the position of Crew Clerk, he failed to advise supervision on February 16, 1982, that he was not qualified. By his silence on February 16, 1982, the Claimant misled the Carrier into believing that he was qualified to perform the job in the Crew Board Room.

It is the Board's judgment that the Claimant acted negligently in failing to check with Chief Clerk Siebenberger before printing the list of assignments on February 16, 1982. Prior to "boardmaking the assignments", Chief Clerk Siebenberger asked the Claimant two (2) or three (3) times if he was ready "to go over the required power", namely, checking the number of assignments scheduled to work the following three (3) shifts. On each of these occasions, he informed Chief Clerk Siebenberger that he was not yet ready to make the check. After Chief Clerk Siebenberger's last request, he told the Claimant to check with him at the first opportunity, before printing the list of assignments. The Claimant failed to comply with the request, and on his own, he marked up the jobs which were not needed.

The serious nature of the Claimant's conduct on February 16, 1982 is mitigated by the Carrier's failure to inform the Claimant either in writing or verbally that the assignments in question were not needed. Chief Clerk Siebenberger could easily have disclosed to the Claimant on February 16 that the jobs were not needed at the times he asked him if he was ready "to go over the required power" and when he finally told him to check with him at the first opportunity, prior to printing the list of assignments. Chief Clerk Siebenberger's failure to disclose such vital information in writing or verbally to the Claimant is in sharp contrast with his prompt instruction both verbally and in writing to the "Boardmakers" on February 15, 1982 after he was notified that the jobs were not needed. In light of this mitigating circumstance the Board is of the view that the discipline imposed by the Carrier was excessive, and should be reduced to five (5) days discipline.

The Claimant is entitled to the loss of wages sustained by him in excess of five (5) days suspension.

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 Emloyes 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 violated.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 12th day of September 1984.

