

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25019
Docket Number CL-24891

Eckehard Muessig, Referee

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

PARTIES TO DISPUTE:

(
(Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9702)
that:

CLAIM NO. 1:

(a) Carrier violated the current Clerks' Agreement when as a result of formal investigation held August 27, 1981, it assessed the personal record of C. G. Brunner with ten (10) demerits.

(b) C. G. Brunner shall now have the ten (10) demerits removed from his personal record and personal record cleared of all charges as stated in formal investigation, and

CLAIM NO. 2:

(a) Carrier violated the current Clerks' Agreement when as a result of formal investigation held August 27, 1981, it assessed the personal record of C. G. Brunner with twenty (20) demerits.

(b) C. G. Brunner shall now have the twenty (20) demerits removed from his personal record and personal record cleared of all charges as stated in formal investigation, and

CLAIM NO. 3:

(a) Carrier violated the current Clerks' Agreement when as a result of formal investigation held September 3, 1981, it removed C. G. Brunner from service, and

(b) Carrier shall now restore C. G. Brunner to service with all seniority rights and other rights accruing thereto unimpaired, and

(c) Claimant Brunner shall be allowed eight (8) hours' pay for each work day (forty (40) hours per week), commencing September 3, 1981, forward, up to and including date of return to service of the Carrier at the rate of pay of his regular position, plus any subsequent wage adjustments.

In accordance with Circular No. 1, issued October 10, 1934, as amended, issued by the Board, the three claims presented have been combined into one submission. Claims 1 and 2 are for the removal of Carrier-imposed discipline arising from incidents alleged to have occurred on the same date and investigation on August 27, 1981; Claim No. 3 protests the discharge of C. G. Brunner which resulted from the accumulative effect of the discipline assessed his personal record because of Carrier's decisions in Claims 1 and 2 which then exceeded the amount permissible by Carrier under the Brown System of Discipline by Record.

OPINION OF BOARD: This claim arose because the Claimant had accumulated a total of 80 demerits and, under the controlling rule, "a balance of sixty demerits subjects an employee to dismissal". At the time of the incident which led to this dispute, the Claimant had accumulated 50 demerits. As a result of two formal investigations concerning alleged rule violations on the part of the Claimant, the Carrier assessed the Claimant 10 and 20 additional demerits, respectively, and he was dismissed from the service.

With respect to the first investigation, the Carrier found the Claimant guilty of being in a poor state of personal hygiene, a violation of two of its rules. He was assessed ten demerits. The second investigation, which was held on the same day, found the Claimant guilty of the violation of three of Carrier's rules relative to his assigned duties, and he was assessed another 20 demerits, totalling 80 demerits.

The foundation of the Organization's contentions rests on its basic assertion that the investigations lacked the degree of fairness and impartiality required of the controlling agreement and that the record does not contain sufficient evidence required to sustain the Carrier's charges. It cites awards and provides considerable and significant arguments of record in support of these contentions.

The Board has thoroughly reviewed the record before it and, although able arguments are a matter of evidence before us, there is no showing that the Claimant's rights were violated.

With respect to the substantive issues herein, there is sufficient evidence to support the Carrier's finding of guilt to the charges. However, upon consideration of certain factors of a mitigating nature, we find that 10 demerits for the Claimant's poor state of personal hygiene was excessive and we hereby assess five (5) demerits. Similarly, with respect to the second claim and with particular reference as to the specificity of the record concerning the tests the Claimant did not perform, we find 20 demerits to be overly severe and they are deleted from the record and the Claimant will be assessed a letter of reprimand.

Accordingly, the Claimant shall be restored to service with seniority rights unimpaired, but without any compensation for time lost while out of service. The Board has also recognized that the Claimant's work record during his seventeen years, up until the last few months before the incidents that led to this dispute, has been a relatively good one. He should understand that the purpose of this award is to give him a final opportunity to become a useful and reliable employee. The Board expects him to comport faithfully with his employment obligations in the future. The claim is hereby sustained to the extent indicated in the findings.

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

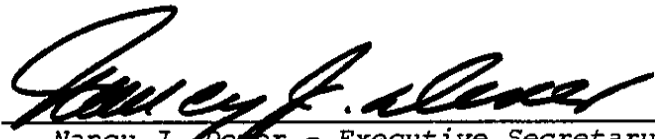
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Defer - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.

