

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25047  
Docket Number CL-25035

John F. Cloney, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station Employees  
(  
(Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9713)  
that:

(1) Carrier violated the Clerk-Telegrapher Agreement when on July 8, 1981, it imposed discipline of five (5) days overhead suspension upon Mrs. Kathy S. Busey, Extra employee, Cumberland, Maryland, and concurrently on the same date of July 8, 1981, did impose twenty (20) days' actual suspension from service upon Mrs. Busey as a result of two (2) investigations conducted on the dates of June 22 and 23, 1981, which action was unreasonable, unjustified and discriminatory, and

(2) As a result of such improprieties, Carrier shall be required to compensate Claimant Kathy S. Busey twenty (20) days' pay between the suspension period of July 8, 1981 through and including July 28, 1981, and that Mrs. Busey's service record be cleared of all notings of charges and disciplinary measures administered.

OPINION OF BOARD: Claimant Kathy S. Busey was an Extra Clerk - Telegrapher assigned to the Cumberland, Maryland Extra Board. She testified she is guaranteed 40 hours but has "no work week as such, I am on a seven day, 24 hour call, to protect vacancies as needed."

On July 8, 1981 the Carrier imposed a 5 day overhead suspension after an investigation conducted on June 22 in connection with a charge of failure to report for duty at 10:00 P.M. on June 8, 1981. Claimant admittedly did not report until 11:22 P.M. On the same date the Carrier imposed a 15 day actual suspension after an investigation conducted on June 23 in connection with a charge of failure to protect an assignment as Extra Board employee by refusing to accept a call to work as Operator at 11:00 P.M. on June 16, 1981. The overhead suspension was reverted to actual suspension so that a twenty day actual suspension was served. Claimant's permanent residence is in Martinsburg, West Virginia. She maintains a temporary residence in Cumberland, Maryland. Martinsburg, West Virginia is 80 miles from Cumberland.

The Organization contends Claimant was making an emergency visit to her children in Martinsburg on June 8. Early that day she had accepted an assignment to protect the 10:00 P.M. - 6:00 P.M. trick at Luke, Maryland which is 110 miles from Martinsburg. The area is mountainous and the drive is three hours. When she started to leave for Luke at 6:30 P.M. Claimant developed automobile trouble. At 7:20 she called the General Clerk and asked if she could fill the third-trick position she was scheduled to work. He could not. At 8:20 P.M. Claimant again called the General Clerk, said she had borrowed a car, and would be a little late.

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On June 16, 1981 Claimant called the General Clerk on duty at Cumberland at 10:00 A.M. and again at 11:45 A.M., asking if she would be called, stating if not, she wanted to go to Martinsburg. Later, after an employe laid off sick, efforts to reach Claimant in Cumberland were made and contact was finally arranged through her mother's residence. Claimant informed the General Clerk she couldn't make it and asked him to mark her off with permission. He said he could not whereupon she told him to mark her off with upset stomach.

The Organization argues the circumstances related above constitute mitigation. This Board notes however Claimant's failure to protect assignments apparently are attributable to the distance between her permanent residence and her duty station, a fact for which the Carrier cannot be required to bear responsibility. The very essence of the position requires her availability.

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

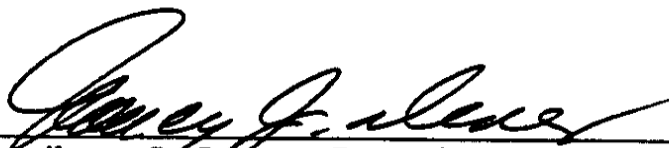
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October 1984.