

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25992
Docket Number CL-25893

Hyman Cohen, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9945) that:

(1) Carrier acted in an arbitrary, capricious, and unjust manner, thus violating Rule 21 of the current agreement, when it assessed Mr. K. W. Taylor with thirty (30) demerits and then dismissed him because of an accumulation of ninety (90) demerits as the result of an investigation held on September 29, 1983.

(2) Carrier shall be required to return Mr. Taylor to service, expunge any notation of this investigation from his record, and compensate him for all time lost beginning October 7, 1983, and continuing until corrected.

(3) Corporation shall also be required to pay Mr. Taylor any amount of expenses he incurred for medical or surgical expense to the extent that such payments would have been paid by Travelers Insurance Company under Group Policy No. GA-23000. The Corporation shall likewise be required to pay Mr. Taylor any amount of expenses to the extent that such payments would have been paid by Aetna Life and Casualty Insurance Company under Group Policy No. GP-12000. In addition, the Corporation shall reimburse Mr. Taylor for any premium payments he may have made in the purchase of substitute dental, health, welfare and life insurance."

OPINION OF BOARD: Before he was terminated from the Carrier's service, the Claimant was employed as a Clerk at the outbound desk at the Roper Yard facility located at Salt Lake City, Utah. Following a formal investigation that was held on September 29, 1983, the Claimant was assessed thirty (30) demerits for his responsibility in allowing a restricted "High Wide" load to move out on Train 193 on September 15, 1983, instead of routing the restricted High Wide load to Train 191, the slower moving "bulk train". The assessment of thirty (30) demerits resulted in an accumulation of ninety (90) demerits against the Claimant's personal record. As a result the Claimant was dismissed from service.

Among the duties that the Claimant was required to perform at the outbound desk, at the Roper Yard facility was to process waybills and to prepare lists for trains that were being fitted for departure. A waybill is the governing instruction as to how an individual car of goods is to be

handled from its starting point to its final destination. The waybill in question stated that the car was a "dimensional load". This notation should have alerted the Claimant to believe that this particular car was unusual. Indeed, the bottom left hand corner of the waybill contained the words, "Wide Extreme" together with the dimensions of the car so as to indicate that the car was a higher and wider load than average which would require routing on Train 191 rather than Train 193.

The Claimant acknowledged that before the hearing, he was not familiar with the numerous Circulars issued by the Carrier regarding the handling of restricted cars. Consistent with his duties as a Clerk, it was his responsibility to have knowledge of the instructions contained in the Circulars. In light of the Claimant's clerical experience, he should have been able to recognize the special instructions on the waybill. By overlooking the special instructions, the Claimant was negligent in his duties.

However, mitigating circumstances are present in this case. The phrase used in the Carrier's Circular to indicate the restrictive nature of a load is "High Wide", rather than "Wide Extreme" which is contained on the waybill in question. Although K. R. Holt, the Clerical Supervisor, acknowledged the phrase "Wide Extreme" is the same as a "High Wide Load" which is referred to in the Carrier's Circular. No notice was given to the employees that the phrases had the same meaning. Thus, the Carrier failed to clarify for its employees the precautions to be used for High as well as Wide Loads. Moreover, the Carrier was unable to establish that a document setting forth restrictions which is generally attached to the waybill was in fact attached to the waybill that the Claimant processed on September 15, 1983. The Claimant's testimony that the document was not attached to the waybill was undisputed. In reviewing the record, it appears that the Carrier's computer system which relays messages throughout the system was down on September 15, 1983. The failure of the Carrier's computer system to operate may very well have been the reason that the document containing restrictions on the car load was not annexed to the waybill. It is also important to point out that the waybill did not indicate that Train 193 could not move the load. And finally, it should be noted that the Claimant did not see the car on September 15, 1983.

The record discloses that the Claimant's prior work record was less than satisfactory. However, under the facts of this case, discipline is warranted, but permanent dismissal from service is excessive. Except for the offense committed by the Claimant on September 15, 1983, for which he was assessed thirty (30) demerits, the Carrier has assessed twenty (20) demerits against the Claimant for each of the offenses he has committed since March 1980. In light of the record in this case, the Carrier's assessment of thirty (30) demerits is unreasonable and excessive. Accordingly, the Board is of the opinion, that the Claimant is to be restored to service with seniority and other 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 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 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. Dever - Executive Secretary

Dated at Chicago, Illinois this 26th day of March 1986.