

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26071  
Docket Number CL-26006

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees  
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: " Claim of the System Committee of the Brotherhood  
(GL-9967) that:

1. Carrier violated the terms and provisions of the current Clerks' Agreement, particularly Rule 21, when on date of December 22, 1982, the Carrier issued Discipline Notice #75 to Yvonne Khatib, IBM Clerk, Proviso, assessing her a 45-days suspension effective with the termination of her assignment commencing 11:59 p.m., December 22, 1982.

2. Carrier shall now be required to compensate IBM Clerk Yvonne Khatib for all the time lost as a result of the 45-days suspension and that her record be cleared of such entry."

OPINION OF BOARD: This is a discipline case involving Claimant who was herein assessed a forty-five (45) days suspension for failure to protect her assignment. Carrier's assessed discipline followed an Investigation, held on December 22, 1982, which indicated to Carrier that Claimant had failed to comply with Rule 14.

The Organization at the outset of the Investigation and immediately thereafter by letter of January 27, 1983, raised procedural issues. We have carefully examined the record and find no probative evidence that Claimant's rights under the Agreement were violated.

On merits, a review of Rule 14 and the circumstances as they developed on property substantiate that the Carrier has sufficient evidence to conclude that Claimant was guilty as charged. Claimant was scheduled to work on the winter night of December 10, 1982. Claimant called in more than an hour prior to her scheduled starting time. She indicated to the Chief Clerk that her car heater was not functioning. By clear deduction the Chief Clerk indicated during the Investigation that Claimant's defrosters were inoperative, as she states for the record. She was denied permission to lay off and yet Claimant did not protect her assignment. There is much in the record regarding a two hour notification requirement, but this Board finds nothing in the Agreement or issue that effects the Carrier's findings of guilt. Claimant had a valid problem, but this Board finds absolutely nothing in the record to indicate that she made any effort whatsoever to attempt to protect her assignment and fulfill her employment obligations after her car heater failed. As such, the Claimant was guilty as charged.

Considering the above, the only issue remaining is the assessed discipline. In the mind of this Board, Carrier's assessed discipline was excessive. Even considering Claimant's poor disciplinary record, the Claimant did notify Carrier of an undisputed car heater problem. Failure to protect her assignment is a serious offense, inexcusable by hour of day or distance of thirty miles from work site. Yet in the circumstances of the instant case this Board finds that the discipline was unduly harsh and will reduce discipline to a twenty (20) days suspension with compensation for excess time lost.

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 Employee involved in this dispute are respectively Carrier and Employee 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

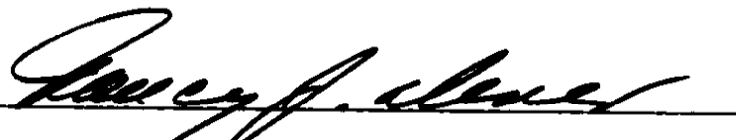
That the discipline was excessive.

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 8th day of July 1986.

