

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26172

Docket Number CL-26131

John E. Cloney, Referee

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

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-9952) that:

1. Carrier violated the provisions of the current Clerks' Agreement, particularly Rule 21, when on May 16, 1983, the Carrier issued Discipline Notice #73 to R. J. Lucier assessing him a 15 day actual suspension effective May 17, 1983, after investigation held on May 11, 1983, and

2. Carrier shall now be required to clear R. J. Lucier's personal record of all references to the suspension and, in addition, pay R. J. Lucier for all wage losses sustained as provided in Rule 21(c) of the current Clerks' Agreement."

OPINION OF BOARD: When Claimant was sent a letter of reprimand by Trainmaster/Traveling Engineer he returned it after writing abusive and obscene language in the margins. On May 10, 1983, he was directed to attend a formal investigation regarding:

"Your responsibility for using abusive and obscene language to an officer in your reply on the letter of reprimand that was sent to you on May 9, 1983."

The Investigation was conducted on May 11, 1983. At the Hearing Claimant was asked if he felt he had sufficient time to prepare and answered "I have no objections."

The Organization contends, notwithstanding dictionary references, the terms used by Claimant are neither obscene nor abusive and are used daily in the industry. It also argues the original letter of reprimand was faulty in that it constituted discipline without prior Investigation.

Carrier has established that on this property reprimands are historically issued without going through the formal procedures of the Discipline Rule, with employees being allowed to raise the question of justification through the usual methods.

Accordingly Claimant had an avenue to protest the Letter of Reprimand and his conduct was an unwarranted overreaction to it. On the other hand, and putting aside the question of whether the written comments were obscene or abusive this Board must view a 15 day suspension as an overreaction on Carrier's part also. The original reprimand appears to have sufficiently remedied any conduct which required remedy and accordingly we shall require Claimant be made whole for any wages lost as a result of the 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 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. Dever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1986.

