

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 26221
Docket Number CL-24466

Martin F. Scheirman, Referee

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

PARTIES TO DISPUTE:

(
(The Baltimore and Ohio Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9544)
that:

(1) Carrier violated the terms of the Clerk-Telegrapher Agreement in effect between the Parties when, on May 1, 1979, it imposed discipline of fifteen (15) days suspension from service upon Class Consist Clerk L. D. Adams as a result of investigation held April 27, 1979, which was unreasonable and improper and,

(2) As a result of such impropriety, Carrier shall now be required to reimburse Claimant L. D. Adams for lost wages in connection with such improper suspension from Carrier's service (May 11 through May 25, 1979) and that her record be cleared of such charges and discipline.

OPINION OF BOARD: This dispute concerns a fifteen day actual suspension assessed by Carrier against Claimant, Class Consist Clerk L. D. Adams. On April 16, 1979, Claimant was due to report to her position at 6:00 p.m. at Carrier's Terminal Services Center in Baltimore, Maryland. However, Claimant did not report for work at that time. Instead, at 6:11 p.m. she contacted her supervisor and informed him that she could not protect her assignment that day account of an automobile breakdown on Interstate 95.

As a result of this incident, Carrier conducted an investigation on April 27, 1979, with C. E. McAbee, Assistant Manager Baltimore Terminal Services Center, presiding as Hearing Officer. On May 11, 1979, Claimant was notified by Assistant Manager McAbee that she was being assessed fifteen days actual suspension for "failing to protect your assignment on April 16, 1979."

The Organization contends that Carrier did not afford Claimant a fair and impartial investigation as required by Rule 47 of the Agreement. First, the Organization argues that Assistant Manager McAbee, after conducting the investigation, turned the transcript over to M. E. Donegan, Acting Superintendent - Agencies and yard Offices, who issued the findings of guilt and imposed the discipline here. In the Organization's view, only the official who presided at the investigation may properly determine Claimant's guilt or innocence.

Second, the Organization asserts that Claimant's appeal was not handled in the regular order of succession as required by Rule 47. According to the Organization, Division Manager J. M. Emmett approved the disciplinary measure recommended by Acting Superintendent Donegan. However, the Carrier's Division Manager Emmett also acted as Carrier's first level officer to hear Claimant's appeal. In the Organization's words, "One could hardly believe that a Carrier Officer of authority would alter or override his own initial approval in a discipline case,..."

Thus, the Organization reasons that Carrier did not afford Claimant her due process rights in the handling of this dispute. Therefore, the Organization asks that the claim be sustained on procedural grounds alone.

As to the merits, the Organization asserts that Claimant was unavoidably detained account of car trouble. Moreover, she did inform her supervisor of her inability to protect her assignment at 6:11 p.m., only eleven minutes after her trick began. In the Organization's view, a fifteen day actual suspension is disproportionate to Claimant's eleven minute delay in protecting her assignment. Accordingly, the Organization asks that the claim be sustained on its merits as well as for procedural reasons.

Carrier, on the other hand, asserts that it did not violate the Agreement here. First, Carrier contends that Assistant Manager McAbee, himself found Claimant guilty of the offense charged. Second, Carrier maintains that the appeal was, in fact, handled in accordance with regular procedures on the property.

As to the merits of the claim, Carrier points out that Claimant's car trouble occurred at 1:15 p.m. near Richmond, Va. some 160 miles from its Baltimore facility. However, Claimant failed to inform her supervisor until 6:11 p.m. that she would not be able to protect her assignment on April 16, 1979. Under these circumstances, Carrier argues that it properly found Claimant guilty as charged. Moreover, Carrier points out that Claimant has been involved in similar incidents during her five years of service. In light of this record, Carrier insists that a fifteen day actual suspension is appropriate here. Thus, for the foregoing reasons, Carrier asks that the claim be denied.

After reviewing the record evidence, we are convinced that the procedural arguments must fail. This is so for a number of reasons. First, the record evidence does not indicate that the finding of guilt was made by anyone other than Presiding Officer McAbee. If anything, it reveals that the imposition of the fifteen day suspension was recommended by Acting Superintendent Donegan and approved by Division Manager Emmett.

There exists a clear distinction between findings of guilt and imposition of an appropriate penalty. As this Board stated in Award 7088, in this regard, "Rule 47(f) indicates that the parties recognized the difference between a decision as to guilt or innocence and the imposition of discipline upon one found guilty." Here the official who presided at the investigation found Claimant guilty, even though other officials may have had a say in determining the appropriate penalty.

Second, we do not believe that Division Manager Emmett's role as appeals officer violated Claimant's due process rights. As noted above, Division Manager Emmett did not participate in the finding of Claimant's guilt. Thus, he was free to hear an appeal on the matter as Carrier's appeals officer. In addition, as such officer, Division Manager Emmett was free to review disciplinary recommendations provided by the hearing Officer based upon new arguments in the Organization's appeal.

Furthermore, we do not believe that Award 14031, cited by the Organization, is applicable here. In that case the "Superintendent (who) was, in fact, the person who made the determination that the Claimant was guilty, and then assessed the punishment" and, further, acted as an appeals officer. Here, no Carrier official determined Claimant's guilt and also acted as Appeal Officer. Thus, we conclude that Carrier afforded Claimant a full and fair investigation.

As to the merits of the claim, the record evidence is clear that Claimant's trouble occurred at 1:15 p.m., while she was approximately 160 miles from Baltimore. Even after the car was repaired at 2:45 p.m., she was still some three hours driving time from Baltimore. Thus, early in the afternoon of April 16, 1979 Claimant knew or should have known that she would have difficulty in arriving to work by the beginning of her trick. However, she waited until 6:11 p.m., after her trick began, to inform her supervisor that she could not protect her assignment on that day. Thus, the record is clear that Claimant was negligent in failing to inform her supervisor, in a timely manner, of her inability to arrive at work at the appropriate time.

Finally, we are persuaded that the fifteen day actual suspension imposed by Carrier is an appropriate penalty. Her prior record included four entries similar to the present charges within a five year period of service. Under these circumstances, it was appropriate for Carrier to assess such suspension. Accordingly, and for the foregoing reasons, the claim must fall.

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

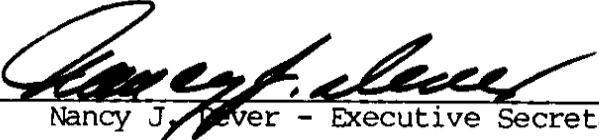
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Lever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of January 1987.