

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 28717  
Docket No. CL-29032  
91-3-89-3-459

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Soo Line Railroad Company)

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10392) that:

Claim 1(a): Carrier violated the effective Agreement at Bensenville, IL when it charged, held investigation and arbitrarily and capriciously assessed a thirty (30) day deferred suspension with a one (1) year probationary period effective August 28, 1986, against Ms. Doris Daniels for her alleged failure to properly waybill two (2) cars while working Train Clerk Position 04860 on Friday, July 25, 1986.

Claim 1(b): Carrier violated the effective Agreement at Bensenville, IL when it charged, held investigation and arbitrarily and capriciously assessed a fifteen (15) day deferred suspension with a one-year probationary period effective September 19, 1986, against Ms. Doris Daniels for her failure to comply with verbal instruction given her by Chief Clerk C. Doyle and Assistant Yard Office Supervisor D. J. Scheuermann on August 13, 1986, and written instructions given to her by Assistant Yard Office Supervisor D. J. Scheuermann on August 14, 1986.

Claim 1(c): Carrier violated the effective Agreement at Bensenville, IL when it charged, held investigation, and arbitrarily and capriciously assessed discipline of a ninety (90) day actual suspension against Ms. Doris Daniels for her alleged missing the diversion of thirty-five (35) cars of potash on arrival of CM198 at 2040 November 14, 1986, while employed in the Bensenville Yard Office on position 80326/04869 on November 14, 1986.

(2.): Carrier shall now be required to clear Ms. Doris Daniel's record of all reference to these incidents and compensate her for all lost earnings sustained account her suspension."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At issue in this case is the assessment of discipline to Claimant, as the result of three Investigations. At the first, Claimant was charged with failure to waybill two cars properly. She was assessed a 30-day deferred suspension with a one-year probationary period. At the second, the charge involved her alleged failure to follow oral and written instructions. Claimant was issued a 15-day deferred suspension, with a one-year probationary period. At the third, Claimant was charged with missing the diversion of 35 cars and was given a 45-day actual suspension, which activated the prior 45-day deferred suspension, resulting in an actual 90-day suspension. This decision covers all three incidents.

In the first [Claim 1 (A)], occurring on July 25, 1986, the wrong destination was indicated on two waybills. Claimant acknowledged that a mistake was made, but argued that she was not totally at fault, since a Supervisor was not present and she had not received proper instructions.

In the second [Claim 1 (B)], Claimant allegedly failed to comply with two sets of oral instructions on August 13, 1986, and a repetition of the instructions in writing on August 14. Claimant was told to stay at work on August 13, for the 11:00 P.M. to 7:00 A.M. tour and was informed that if she left because of illness, medical documentation would be required. She left work at 11:15 P.M. The third shift Chief Clerk reported that Claimant said she was leaving because of diarrhea. Claimant denied making the statement.

Claimant maintained that the individual's whose position she was to fill decided to work and thus there was no open position. Carrier argued that there were several positions for her to fill and that when she left, she failed to bring in proper documentation.

In the third incident [Claim 1 (C)], Claimant allegedly missed the diversion of 35 cars of potash on November 14, 1986. The Organization argued that this Claim should be dismissed because Carrier failed to hold an Investigation in a timely manner. It further contended that the discipline imposed was excessive and that the error that occurred resulted from Carrier's poor procedure for handling hold cars at Bensenville. Carrier, on the other hand, maintained that Claimant was negligent. It also argued that the Organization raised no objection to the postponement of the Hearings until two months after it was actually held. If the employees did not agree to the postponement, they were obligated to raise an objection at the Hearing. Given their silence, Carrier could assume that the decision to extend the time limits was mutual.

This Board has reviewed the entire record of these disputes and concludes that there was sufficient evidence adduced in the transcripts of the Investigations to support all of the charges against the Claimant. Claimant acknowledged her mistake in Claim 1 (A), when the wrong destination was indicated on two waybills. Her argument that better instructions or greater supervision was required was not persuasive, given her level of experience at the time.

In Claim 1 (B), we find that Claimant acted precipitously in leaving work without the proper authorization to do so. As Carrier noted, there were several positions for Claimant to fill. She was not free to decide for herself that she was no longer needed. In telling Claimant that she would be required to bring in medical documentation if she left, Carrier was signaling to her the fact that if she elected not to stay, she had to be sufficiently ill so as to warrant medical attention. That would be the only basis for tolerating her absence.

In conjunction with the Organization's argument that Claim 1 (C) was procedurally defective due to Carrier's failure to hold an Investigation within prescribed time limits, we note that in numerous cases wherein such claims were sustained, a timely objection was raised by the Organization. (See, for example, Third Division Award 24247, wherein there was a "...unilateral postponement of the investigation on August 30th over the objections of Claimant's representatives....)" In the instant case, the Organization neither objected to Carrier's postponements when notified in writing about the delays, nor brought up the issue when the Hearing was finally held. Given that an objection was not raised until some two months later, we must conclude that Carrier had the right to assume that the postponements were mutually acceptable.

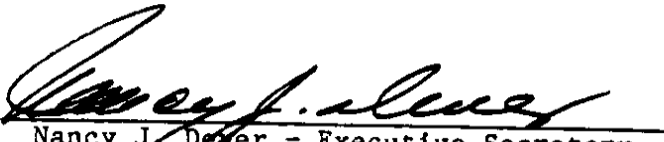
Because of the nature of the infraction, the cost to Carrier due to the error, and the fact that this was the third disciplinary action within a relatively short period of time, the Board cannot conclude that the level of discipline imposed was excessive.

A W A R D ~ ~

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of March 1991.