

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 28892
Docket No. CL-29442
91-3-90-3-437

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

(Carrier's File No. TCU-D-3149/TCU File No. 393-C9-084-S)

Claim of the System Committee of the Brotherhood (GL-10488) that:

1. The Carrier acted in arbitrary, capricious and unjust manner and in violation of Rule 24 of the Agreement, when by notice of August 27, 1989 it assessed as discipline ten (10) days' suspension against Reservation Sales Agent, Ms. Carmen Noble-Russell.

2. The Carrier shall, if Claimant is ever required to serve the suspension, reinstate her to service with seniority rights unimpaired and compensate her an amount equal to what she could have earned, including but not limited to daily wages, overtime and holiday pay, had discipline not been assessed.

3. The Carrier shall now expunge the charges and discipline from the Claimant's record."

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.

The Claimant worked as a Reservation Sales Agent. On August 1, 1989, she was directed to report for a formal Investigation on charges she violated Rules D and O of the National Railroad Passenger Corporation Rules of Conduct, which read:

Rule D: "Employees must understand and obey Company and department policies, procedures and special instructions. . . .

Specifically the Midwestern Reservation Sales Office Special Instructions, SECTION TWO: Call Handling Standards, which states:

3. Incoming calls must be serviced in a prompt and efficient manner. The attitude you display should reflect a sincere effort to offer the quality of service the customer deserves.

5. All passengers should be acknowledged properly and should never be placed on hold unnecessarily. Placing a call on hold to converse with a co-worker is not permissible for any reason.

6. The intentional interruption or disconnection of a call is prohibited.

Rule O: Employees . . . must attend to their duties during assigned working hours. Employees . . . may not engage in other than Amtrak business while on duty."

On July 24, 1989, the Claimant's handling of incoming reservation calls was monitored by a Supervisor between the hours of 12:17 P.M. and 12:35 P.M. During the first call, the Claimant placed the caller on hold for three minutes while she carried on a conversation with a co-worker. That caller did not wait for her to return. The second call was from a Travel Agent who was having difficulty with the new Amtrak system which had been installed. The Claimant allegedly was terse to the point of being rude. The Travel Agent subsequently called and complained about the treatment she received. During the third call the customer was placed on hold and when she was reconnected, she asked the Claimant her name and the Claimant disconnected without saying anything.

The Hearing was held on August 18, 1989. From the evidence adduced at the Hearing, the Carrier determined the Claimant had been guilty of the Rule infractions and she was suspended for ten (10) days. The Organization appealed the decision.

The Organization contends the evidence presented concerning the Travel Agent was hearsay evidence. However, it is noted the testimony of the Supervisor who received the call was not for the purpose of proving the conversation between the Claimant and the Travel Agent, but was for the purpose of showing a complaint had been registered with the Supervisor who received the call. Absent a showing of bias on the part of the Supervisor testifying,

it is generally accepted that such testimony should be given credence. Besides, the Carrier also had the testimony of the Supervisor who monitored the call in question. In fact, in all three of the calls at issue, there is sufficient evidence the Claimant did not respond as courteously as she should have and was guilty of violating the cited Rules.

In this case, the Hearing Officer erred in his handling of the Hearing. By insisting that only the negative elements of the Claimant's record be entered, he did not allow adequate presentation of the Claimant's total performance. While it is true previous Rule infractions may show tendencies of performance, they do not serve as proof of the current allegations. They do serve to help determine the appropriate penalty. Likewise, positive aspects of an employment record can serve to mitigate any penalty contemplated or issued. Therefore, it is patently unfair to pick and choose those elements of an employee's record which show the employee in a "bad light" and support the allegations. Such actions constitute a violation of the Claimant's Agreement rights.

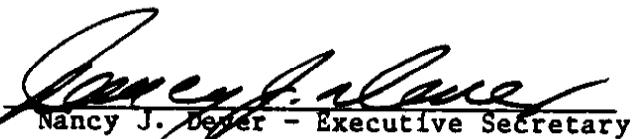
The penalty assessed has to be reviewed in this light. It is difficult to analyze a service record which was not allowed into the record. However, progressive discipline, coupled with the due process deficiencies caused by the Hearing Officer's handling of the Hearing, require a reduction in the penalty issued. The ten (10) day suspension is to be reduced to a three (3) day suspension.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1991.