

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

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

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10504) that:

(CARRIER'S FILE NO. TCU-D-3254; TCU FILE NO. 393-C9-122-D)

1. The Carrier acted in an arbitrary, capricious and unjust manner and in violation of Rule 24 of the Agreement, when, by notice of November 22, 1989, it assessed as discipline dismissal from service against Statistical Clerk, Ms. Vernell Zanders.

2. The Carrier shall now be immediately required to reinstate Ms. Zanders to service and to compensate her an amount equal to what she could have earned, including but not limited to daily wages, overtime and holiday pay had she not been dismissed as mentioned above.

3. The Carrier shall now be immediately required to clear Ms. Zanders' record of the charges made against her in this matter and restore all her rights, privileges and seniority unimpaired.

4. The Carrier shall now also be immediately required to reimburse Ms. Zanders for any amounts paid by her for medical, surgical, or dental expenses for herself and her dependents to the extent that such payments would be payable by the current insurance carriers covering her fellow employees in the Craft. Ms. Zanders shall also be reimbursed for all premium payments she may have to make in the purchase of substitute health, dental and life insurance. This and the above claims shall be considered as on-going and therefore shall continue until such time as this dispute is settled.

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees 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 was hired by the Carrier effective August 26, 1982. At the time of the incident at issue she held the position of Statistical Clerk at Carrier's 14th Street Maintenance Facility in Chicago, assigned to the 2:00 P.M. to 10:00 P.M. shift. Her duties included processing of employee time cards.

On September 2, 1989, the General Foreman observed Claimant entering her work area from the elevator shortly after 2:00 P.M. After Claimant completed her shift, the General Foreman observed her time card on her desk and prepared to sign it. When he noted that Claimant had claimed eight hours for her work day, he attempted to read the blurred time punches on her card to determine the actual time Claimant worked. He then changed the time claimed to seven hours and fifty-six minutes, and signed the card in the "approval signature" space. He did not tell Claimant what he had done, nor did he confront her at that time. When Claimant returned to work, she discovered the change in her time card and, using "white out," revised the card to show eight hours worked for September 2, 1989, as she had originally claimed. She then submitted her time card to Payroll.

A week later, the Payroll Department informed the General Foreman that Claimant's time card for September 2, 1989, appeared to have some irregularities. By the time those irregularities were discovered by the Clerk in Payroll responsible for reviewing time cards, however, Claimant's pay check had already been issued to reflect a full eight hours worked on that day. When the General Foreman saw how the time card had been altered, he brought it to the attention of his Supervisor. By letter of October 2, 1989, Carrier notified Claimant as follows:

"You are hereby directed to appear for a formal investigation for your alleged violation of Rule 'F-3' of the National Railroad Passenger Corporation Rules of Conduct, which state:

F. Employee Conduct

3. Conduct involving dishonesty...

While employed as a statistical clerk at the 14th Street Maintenance Facility, it is alleged that you changed your time card for September 2, 1989, to reflect eight hours worked at the straight time rate, when in fact general foreman A. Aguilar changed your time card to reflect 4 minutes late and 7:56 at straight time, according to punch times. This was found during a review of time cards on September 8, 1989.

It is also alleged that you accepted payment for 8 hours on September 2, 1989, and initially filled out your time card for 8 hours worked on September 2, 1989, when in fact you were four minutes late in reporting for work and punched out at 10:00 p.m., your normal departure time.

* * * *

The Hearing was originally scheduled for October 5, 1989, but was postponed twice, by mutual agreement of the parties. It was ultimately held on November 14, 1989. Following the Hearing, by letter of November 22, 1989, Carrier notified Claimant of her dismissal from Carrier's service. The Organization appealed her dismissal on December 10, 1989. That appeal was denied and the claim was subsequently processed to the highest Carrier Officer designated to handle such matters.

The Organization maintains that the conduct of the Hearing and the resulting assessment of discipline are the product of a "personal vendetta" against Claimant by the General Foreman. In support of this position, it notes that the Hearing was not held in a fair and impartial manner, and that the alleged violation (amounting to 78¢) is "de minimis" in nature, even if proven. By failing to confront Claimant with his suspicions, the General Foreman prejudged Claimant and deprived her of the opportunity to explain her actions. Instead, he escalated the matter immediately to discipline. Moreover, Carrier has not proven the charge against Claimant. Claimant's testimony that she stopped to pick up the time cards to be processed that day after punching in, but before reporting to her usual work area, was not refuted. Because the time punches are unclear, there is no conclusive evidence that she did not, in fact, work the 8 hours she initially claimed on her time card. Finally, the Organization urges that even if, arguendo, the charges were proven, the ultimate penalty of dismissal was excessive.

It is uncontroverted on the record before the Board that Claimant unilaterally altered her time card in lieu of seeking appropriate authority to do so. Nor is there any question that the time stamps which would irrefutably settle the matter before us are improperly imposed upon the time card. It is also uncontroverted that the General Foreman changed Claimant's card based solely upon his observation of her arrival into her usual work area, not her actual arrival on Carrier's premises. While there is absolutely nothing on the record before us to suggest prejudgment or animosity on the General Foreman's part, his decision to change the time card without notifying Claimant is an intemperate one, particularly since he acknowledged his inability to "make out" the exact punch-in time stamped on Claimant's time card. Further, Claimant's insistence that she had taken time to pick up time cards for processing before proceeding to her work area remains unrefuted.

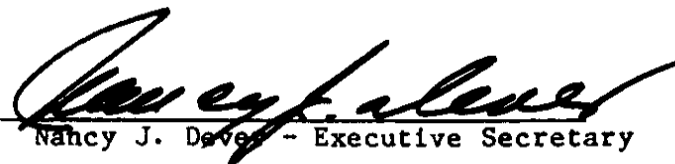
Nevertheless, even viewed in its best light, the act of altering her time card without authorization shows at a minimum particularly bad judgment, since her job involves daily processing of time cards. She is well aware of proper procedures for making time card changes. The fact that she elected not to follow those procedures casts considerable doubt on the bona fides of her actions. Such a lapse of judgment by an employee who "should have known better" is an appropriate occasion for discipline. The ultimate penalty of discharge, however, is excessive under the circumstances absent persuasive evidence that her action was in fact prompted by an intent to defraud Carrier. Accordingly, her discipline shall be reduced to a 90-day suspension without pay and she will be made whole for all other loss of earnings with seniority unimpaired except, upon her return to work, she shall be disqualified from working on time cards until such time as Carrier shall determine she is capable of doing so with complete integrity. All other aspects of the Claim are denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Daves - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1992.