

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29267
Docket No. CL-29665
92-3-91-3-156

The Third Division consisted of the regular members and in addition Referee James E. Mason when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(Green Bay and Western Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10555) that:

(1) Carrier violated the effective agreement when, following an investigation on October 26, 1989, it imposed discipline of a five (5) day suspension from service on Ms. Karen A. Klarkowski commencing October 30, 1989, without just cause.

(2) Carrier shall now be compensate Ms. Klarkowski for all time lost as a result of this suspension from service and shall clear her record of the charges placed against her."

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.

This case involved a 20-year employee who was charged for two separate alleged derelections of duty, namely, "...cars missed on #1's pickup list and being nine days behind in booking cars...". At the Hearing held in connection with the charges, the Claimant was present, represented and testified on her own behalf. Following the completion of the Hearing, Claimant was considered by Carrier to be guilty as charged and was disciplined by suspension of five work days. Proper and timely appeals were handled in the usual manner of handling grievances on the property and, failing to reach a satisfactory resolution thereon, the dispute has come to this Board for final and binding adjudication.

We have read the transcript of the Hearing and are struck by the significant absence of first hand testimony and evidence especially in connection with the first of the two charges. Allegedly certain cars were not included on a pick-up list which Claimant prepared on the date in question. Neither the original nor a copy of the track check list nor the actual number of cars allegedly missed was ever presented during the Hearing. Carrier's two witnesses testified to the effect that they did not know exactly how many cars were supposedly missed when the track check list was made. There was no direct testimony from either the Dispatcher or the Train Conductor who apparently discovered and worked with the cars which were allegedly missed on the track check list. In short, Carrier has not met the burden of proof by substantial evidence on the first part of the charge.

On the second part of the charge, there is testimony to establish that the job of "booking cars" was part of Claimant's assignment. Exactly what that function involves or the significant importance of the function to Carrier's operation was not described in the Hearing transcript. It is testified that this function was added to Claimant's position in January or February, 1989, and that "It wasn't assigned to a job" prior to being assigned to Claimant's position. It is acknowledged that Claimant was not current in her performance of the "booking cars" function. There is unrefuted evidence that Claimant had been cautioned on two prior occasions, February 8, 1989 and March 8, 1989, relative to the performance of this particular job function.

While this Board does not, as a rule, substitute its judgment for that of the Carrier in the assessment of discipline for proven or admitted derelictions of duty, there is not found in this case the degree of substantial evidence, i.e., such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, to justify the assessment of a five-day suspension. Claimant, however, is not completely free from responsibility for her actions, or failure to act, especially in regards to the second part of the charge notice.

Carrier clearly has the right to manage its operations and to assign duties to positions consistent with the terms and conditions of the Agreement. Employees have the obligation to perform their assigned duties. Where, as here, there is an admitted failure to perform certain assigned duties, some form of progressive formal discipline is justified. It is the Board's conclusion that, on the basis of this record, a formal Reprimand is appropriate. Therefore, the five-day suspension is converted to a Reprimand. Claimant is to be compensated for the time lost during the five-day suspension less outside earnings, if any.

A W A R D

Claim sustained in accordance with the Findings.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 12th day of June 1992.