

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29898
Docket No. CL-29986
93-3-91-3-382

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
(Soo Line Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood (GL-10608) that:

Claim 1(a) Carrier violated the effective Agreement at Milwaukee, Wisconsin, when it charged, held investigation and arbitrarily and capriciously assessed a thirty five (35) day actual suspension beginning January 30, 1989 to and including February 20, 1989, and from February 28, 1989 to and including March 12, 1989, against Ms. Janet M. Wyner for her alleged argumentative and disruptive behavior and her alleged failure to accept supervision while working Position No. 41190 at approximately 3:00 P.M. on Friday, January 6, 1989.

Claim 1(b) Carrier violated the effective Agreement at Milwaukee, Wisconsin, when it charged, held investigation and arbitrarily and capriciously assessed a ninety (90) day suspension effective Monday, June 5, to and including Saturday, September 2, 1989, and also the removal from the position of OCC Clerk effective June 5, 1989, against Ms. Janet M. Wyner for her alleged failure to complete the transcribing of the contents of an OCC Department cassette tape before the end of her tour of duty on Wednesday, May 3, 1989.

(2) Carrier shall now be required to clear Ms. Janet M. Wyner's record of all reference to these incidents and compensate

her for all lost earnings sustained account her suspensions and that she be returned to her OCC Clerk position."

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 employee 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 dispute involves two claims. Both were placed in one submission because each involves the same Claimant and Supervisor.

On January 6, 1989, Claimant was called to her Supervisor's office to be apprised of changes the Supervisor intended to make on her time slip. According to the Supervisor, Claimant had called in sick on December 16, 1988, and had been advised that if she was going to be claiming a sick day, she would have to provide a doctor's note. On December 30, 1989, Claimant still had not provided the note so the Supervisor "made out a deduct slip" for the sick day, and explained to Claimant that she was also going to deduct the time she had been tardy on January 3, 1989, which Claimant had failed to indicate on her time slip.

Claimant began to argue with her Supervisor in a loud voice, and accused the Supervisor of being "petty and too picky," and that she (Claimant) did not have to "put up with this xxx anymore." According to the Supervisor and other Carrier witnesses, this transpired outside of the Supervisor's office and Claimant was speaking in a "loud, argumentative and disruptive" tone.

On January 10, 1989, Claimant was advised that a formal Investigation would be held for the purpose of developing the facts and circumstances in connection with her behavior on January 6, at which time Claimant was "argumentative and disruptive and her alleged failure to accept supervision." Pursuant to several postponements, the Investigation was held on January 24, 1989. On January 27, 1989, Claimant was advised that she was assessed a 30 day suspension for the incident, and that in addition, she would

now be required to serve the five day deferred suspension she was assessed in December, 1988, due to another tardiness incident.

On April 4, 1989, Claimant received the following communication:

"This letter is for the purpose of confirming for the record the meeting of March 30, 1989. Those present were John Comeron, General Chairman, TCU, Roger Koch, Manager, Labor Relations, Jim Bender, Director OCC, Becky Solberg, Administrative Asst., and yourself.

At this meeting your responsibility of accepting supervision in the form of meeting deadlines and priorities was discussed. You have been advised in earlier conversations that there may be times you are unable to complete work by the completion date assigned, however, should this happen, you should advise your supervisor in a timely manner in order to determine proper handling. If you feel the priority order of work should be changed you should also feel free to discuss this with Becky.

At this meeting we also discussed the reasons for monitoring of personal phone calls. You had been advised previously that you had been observed on personal phone calls which were excessive.

Issues brought up at this meeting again indicate that you are not being harassed or being treated unfairly, but are being supervised in a manner which is necessary based on your past actions."

Claimant continued to be counseled throughout this time period with respect to prioritizing her duties and her refusal to accept supervision.

The second Claim involves Claimant's failure to complete an assigned task. On May 3, 1989, her Supervisor gave Claimant a tape to transcribe which was to be completed on that day. On Monday, May 8, 1989, the Supervisor was asked if the tape had been sent out. The Supervisor replied that as far as she knew the tape had been sent, but indicated that she would check with the Claimant. When questioned, Claimant stated that she had not finished the tape. Moreover, Claimant offered no explanation concerning her failure to report this to her Supervisor per previous instructions. Claimant maintained that the task was not completed due to the fact that she was "off sick on Friday, and had other work to do."

On May 12, 1989, Claimant was advised that a formal Investigation of the incident would be held on May 18, 1989 to "determine all facts and circumstances in connection with your alleged failure to complete the aforementioned assignment within the time limit prescribed or notify your supervisor your assignment could not be completed within that time period."

The investigation was postponed, and subsequently held on May 18, 1989, and on June 2, 1989, Claimant was informed that she had been assessed a 90 day suspension effective Monday, June 5, 1989, and that she was removed from the position of OCC Clerk also effective June 5, 1989. On June 5, the Organization appealed the decision stating that the assessment of discipline was extreme. Carrier again denied the claim. Correspondence concerning this issue continued through June 21, 1990, at which time a conference was held. The conference failed to resolve this dispute, therefore, it is before this Board for adjudication.

According to the Organization, Claimant was "disciplined unfairly for a minor reaction to an exchange of ideas between two parties" in the incident which occurred on January 6, 1989. Further, the Organization asserts that the incident which took place on May 3, 1989, is "nothing more than a continuation of the harassment the Claimant has been experiencing since April, 1989." The Organization emphasizes that the Claimant's work load was "extremely heavy" on May 3, and she simply did not have enough time to complete the assigned task. Claimant maintains that when she realized she would be unable to finish the work, she apprised the party who furnished the tape of the situation. Claimant stated that she was told "not to worry about it," however, the party who furnished the tape was unable to recollect the conversation. Finally, the Organization emphasizes that the Claimant was having "extreme personal problems" at the time, which contributed greatly to the incident.

For its part, the Carrier asserts that past incidents with Claimant have resulted in the instructions that she "strictly adhere" to the priority of work items given to her. Further, the Carrier maintains that it has taken "numerous" steps with the Claimant in an attempt to assist her in the proper and timely completion of her duties, and "has made every attempt to accommodate her personal situation." Based upon these facts, as well as Claimant's past record, the Carrier maintains that the discipline assessed, in conjunction with both incidents was proper and justified.

Testimony on the record clearly demonstrates that, in the first instance, Claimant engaged in a loud verbal exchange with her supervisor. If Claimant had had a legitimate complaint concerning her supervisor's actions, she could and should have availed herself

of the legitimate channel of protest: the grievance process. Instead, she chose to engage in a heated and inappropriate debate with her supervisor. Absent a persuasive showing of provocation, the Organization cannot prevail in the first Claim. The discipline assessed by Carrier for Claimant's insubordination was neither discriminatory nor excessive.

With respect to the second Claim, Claimant had ample warning that she was being held to a high standard of responsibility for completing her work, in light of her previous difficulties in doing so. Contrary to the Organization's position that Carrier was "harassing" Claimant, the record indicates that Claimant received counseling and a written explanation of Carrier's proposed monitoring of her work progress and her telephone calls. Despite this information, Claimant again failed to complete work as directed or, in the alternative, to inform her supervisor that she was having difficulty completing it within the time allotted. In view of Claimant's blatant disregard for her clear responsibilities, Carrier's assessment of discipline was warranted.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.