

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 30426  
Docket No. CL-30763  
94-3-92-3-749

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

(Transportation • Communications International  
(Union  
PARTIES TO DISPUTE: (  
(Elgin, Joliet & Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the  
Brotherhood that:

1. Carrier violated the effective agreement when, following an investigation held on June 27, 1991, it imposed discipline on Ms. Nellie Jenkins in the form of ten (10) demerits against her record without just cause;
2. Carrier shall now rescind the discipline imposed and shall clear Claimant's 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 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.

By letter dated June 20, 1991, Claimant was notified to appear for an Investigation to:

"determine your responsibility, if any, relative to the charge that while assigned to an extra JCYC 3 position, you improperly performed your duties when you allegedly failed to identify a placarded car on your Clay Pit Train Yard check of June 7, 1991."

Following an Investigation held on June 27, 1991, Claimant was assessed ten demerits under Carrier's "discipline through demerits" system. That discipline was appealed and progressed in the usual manner. Following conference on the property on June 11, 1992, the issue remained unresolved.

It is the position of the Carrier that failure to detect a placarded car is a serious infraction. Railroad cars are placarded to indicate that they are carrying hazardous materials. Accordingly, work related to movement of those cars must be performed correctly. Moreover, at the Investigation, Claimant admitted her mistake.

The Organization points out that the error Claimant admitted making was minor. It was detected by another Carrier employee within a few minutes and corrected. Further, Carrier suffered no inconvenience or adverse effect from what was merely "human error." Under such circumstances, assessment of discipline was punitive and without justification.

In light of Claimant's admission of her error and in view of the potential seriousness of failing to note a placarded car, the fact that there was no actual adverse effect upon Carrier does not excuse Claimant's negligence. Under the circumstances, Carrier's assessment of discipline was neither unreasonable nor excessive.

AWARD

Claim denied.

O R D E R

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of August 1994.