

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31334
Docket No. CL-31654
96-3-93-3-672

The Third Division consisted of the regular members and in addition Referee Andree Y. McKissick when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International
(Union
(Grand Trunk Western Railroad Incorporated

STATEMENT OF CLAIM: "Claim of the System Committee of the Union
(CL-10996) that:

- (1) Carrier unjustly disciplined Detroit Clerk, M. E. Carmody, effective November 24, 1992, as a result of an investigation held on November 16, 1992, in which it failed to prove the charges and failed to provide Claimant with a fair and impartial hearing and review of the record.
- (2) Carrier shall now be required to reinstate Mrs. Carmody, to her former position of Secretary-Purchasing Department with all rights unimpaired, reimburse her the \$3,752.74 deducted from her wages at \$50.00 per week with 100% interest and remove any mention of this disciplinary action from her record and pay her all lost earnings and benefits as a result of her disqualification from the aforementioned position, with 100% interest."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all that 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 claim involves the alleged theft through the falsification of payroll sheets from January 1, 1991, to July 21, 1992, of \$3,752.74. The Organization contends that the Carrier failed to meet its burden of proof. Moreover, the Organization argues that Claimant is a long-term employee with an unblemished record. The Organization asserts that by her omission, to take two (15 minute) breaks and one (30 minute) lunch period, the Claimant gained one hour of paid work. Thus, the Organization points out that there was no falsification, as the Carrier urges, and that her Supervisor authorized this action.

The Carrier responds that it met its burden of proof by a preponderance of clear and convincing evidence based upon an internal audit. Moreover, the Carrier contends that it is reasonable to conclude that the Claimant is guilty as charged and that her Supervisor was also disciplined for this impropriety.

The Board finds that in the interest of fairness, the Claimant should be reimbursed and paid her lost earnings, but without interest. This Board finds further that this disciplinary charge should be removed from her record. The Board concludes that the Carrier failed to meet its burden of proof of a preponderance of evidence as required.

AWARD

Claim sustained in accordance with the Findings.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 25th day of January 1996.