

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 31491
Docket No. CL-31934
96-3-94-3-273

The Third Division consisted of the regular members and in addition Referee Martin H. Malin when award was rendered.

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

STATEMENT OF CLAIM: "Claim of System Committee of the
Organization (GL-11041) that:

1. The Carrier acted in an arbitrary, capricious and unjust manner and in violation of Rule 24 of the Agreement when, by notice of March 4, 1992, it assessed discipline of ten working days suspension against Reservation Sales Agent, Ms. Ruth Ann Swanson-Malkov.
2. The Carrier shall, if she is ever required to serve the suspension, be immediately required to reinstate Claimant to service with seniority rights unimpaired and compensate her an amount equal to what she could have earned, including but not limited to daily wages, overtime and holiday pay, had discipline not been assessed."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all of 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.

On December 6, 1991, Claimant was notified of an Investigation, to be held December 12, 1991, concerning Claimant's alleged violations of Rules D, F(1) and O on November 17, 1991. Following two postponements, the Hearing was held on February 24, 1992. On March 4, 1992, Claimant was advised that she had been found guilty of the charges and suspended for ten working days.

Claimant worked as a Reservations Sales Agent. The charges and discipline resulted from two Supervisors' monitoring of her calls on November 17, 1991. One Supervisor heard beep tones on two calls which he interpreted to indicate that Claimant had hung up prematurely on the customers. Both Supervisors observed that Claimant left her position with her headset plugged in and turned on, resulting in three calls going unanswered.

The Organization argues that Carrier failed to prove the charges by substantial evidence. The Organization maintains that Carrier did not prove that the beep tones meant that Claimant had hung up on the two callers. The Organization urges that the callers may have hung up first. It contends that the Supervisor was not familiar with the beep tones and had to conduct tests after the monitoring to determine the significance of the beep tones.

The Organization concedes that Claimant left her position unattended with her headset in the available position, but maintains that, in so doing, she followed her usual practice and was pressured into doing so by Carrier's productivity standards. The Organization maintains that the discipline imposed was arbitrary, capricious and excessive.

Carrier contends that the evidence established Claimant's guilt. Carrier argues that the evidence established that the beep tones indicated that the Claimant depressed the release button terminating the calls. According to Carrier, the tests that the Supervisor carried out merely confirmed this. Carrier further observes that the Claimant admitted leaving her position unattended with her head set plugged in and that she had been advised previously not to do that. Carrier argues that Claimant's actions artificially inflated her productivity rating by causing her to get credit for calls that she did not handle. It also damaged Carrier by causing customers to get no answer and hang up. Carrier maintains that the severity of the offense justified the ten day suspension.

The Board has reviewed the record thoroughly and carefully. We find that substantial probative evidence supports the charges against the Claimant.

Claimant admitted that she left her position with her headset plugged in. Claimant also admitted to having been told previously not to do this. Claimant's actions caused three callers to have their calls answered without a response and to hang up. These represent three potential lost sales for Carrier.

The Supervisor testified that, prior to the Claimant's leaving her work station, he monitored five calls. Three were handled without incident. The other two calls produced the beep tones indicating that Claimant had depressed the release. On one of those calls, the caller inquired about trains to Winford, Virginia. The Claimant found no listing for Winford and asked the caller for the next closest city. The caller responded very loudly, "Williamsburg." The beep tones followed.

The other caller spoke in a thick accent and asked for a number for Amtrak. According to the Supervisor, the caller was cut off by the beep tones.

Claimant denied hanging up prematurely on the two callers. She testified that the call concerning Winford, Virginia, was completed but that it appeared that the caller had neglected to hang up. Therefore, she depressed the release button. Claimant's testimony, however, was inconsistent with the statement she made to her Supervisor on the day of the incident. At that time, according to the Supervisor, she denied pressing the release button and blamed the beep tones on her depressing *1 and *8 in an effort to deal with faulty equipment.

Resolution of the conflict over how the two calls at issue were handled turns on the relative credibility of Claimant and her Supervisor. Generally, we defer to credibility determinations made on the property. We see no reason to overturn the credibility determination in the instant case. Had Claimant depressed *8, a record would have been made of it, but no such record was made. Furthermore, there was no record of any report by Claimant of faulty equipment. We find nothing sinister about the Supervisor conducting tests to verify the significance of the beep tones. Rather, they were a reasonable method of testing the Claimant's suggestion that the tones were caused by her pressing *8 or *1. The test results support, rather than detract from, the Supervisor's credibility. Finally, we find nothing in the record, including the Claimant's own testimony, that would lend any credence to the Organization's speculation that the beep tones may have been caused by the callers' phones or by the Supervisor.

We next turn to the severity of the penalty. Here, we do not write on a clean slate. Both parties have cited numerous awards evaluating discipline imposed on this property for Reservations Sales Agents' irregularities. In Special Board of Adjustment No. 1024, Award 24, a Reservations Sales Agent with approximately three years' seniority was suspended for ten days for being rude and making an ethnically derogatory remark to a customer. The Board found the penalty excessive and reduced it to a five day suspension.

In Special Board of Adjustment No. 1024, Award 11, the Carrier had suspended for ten days a Reservations Sales Agent with approximately four years' seniority for placing three calls on hold while engaging in personal conversations. The Board reduced the suspension to three days. The same Board in Award 19 reduced a ten day suspension to three days where a Reservations Sales Agent with approximately two years' seniority placed two callers on hold without first acknowledging their calls and provided no service to them for periods of three minutes each. In Award 23, the same Board reduced a ten day suspension to three days actual and two days deferred where a Reservations Sales Agent with approximately two years' seniority improperly handled three of five calls that were monitored and left his work station without permission. In Award 22, however, the same Board denied a claim of a Reservations Sales Agent suspended for ten days for not properly attending to her duties over a period of almost two hours, during which she hung up on callers prematurely, placed callers on hold without justification and for excessive periods of time and repeatedly was inattentive and discourteous toward customers.

In Public Law Board No. 2792, Award 16, the Board denied the claim of a Reservations Sales Agent who was terminated because he had failed to acknowledge three callers, placed them on hold and terminated the calls without providing service. Claimant had previously been suspended for similar misconduct. In Public Law Board No. 2296, Award 154, the Board upheld the dismissal of a Reservations Sales Agent who disconnected 25 callers rather than handle their requests.

After careful review, the Board finds that the Claimant's misconduct was more comparable to the misconduct of Reservations Sales Agents whose discipline was reduced to suspensions of less than ten days, than it was to the misconduct of Reservations Sales Agents for whom more substantial discipline was upheld. Claimant had no prior formal discipline. She handled three of the five calls that were monitored appropriately. Furthermore, after Claimant returned to her work station, one of the Supervisors

continued to monitor her and found that she handled all subsequent calls appropriately.

Claimant's misconduct was serious and warranted a suspension to impress on her the significance of her actions. However, it is not comparable to the two hour long neglect of duty that justified the ten day suspension in Special Board of Adjustment No. 1024, Award 22. Nor is Claimant a recidivist as was present in Public Law Board No. 2792, Award 16, and Claimant's misconduct certainly falls far short of the 25 callers on whom the claimant in Public Law Board No. 2296, Award 154, hung up without providing any service.

Accordingly, we find the ten day suspension was excessive. Claimant's suspension will be reduced to three days and she will be made whole for all time lost in excess of three days.

AWARD

Claims 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 23rd day of May 1996.