

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 31936
Docket No. CL-32238
97-3-95-3-53

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
(Chicago, Central & Pacific Railroad Company

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-11121) that:

1. The Carrier acted in an arbitrary and capricious manner when it unjustly assessed discipline of a five (5) day suspension on Sue Bulick following the formal investigation held on August 23, 1994, in violation of Rules 35 and 36.
2. Claimant's record shall be cleared of the charges brought against her at the investigation.
3. The Carrier shall now be required to compensate Clerk Bulick for five (5) days compensation due to the above suspension.
4. The Carrier shall also be required to compensate Clerk Bulick for wage loss sustained on August 23, 1994, when she was required to attend an investigation."

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 were given due notice of hearing thereon.

At the time this claim arose, Claimant was an Extra Clerk. By letter of September 1, 1994, she was notified to attend an Investigation concerning her alleged failure to properly call a relief Engineer. An Investigation was held on August 23, 1994. Following the Hearing, Claimant was notified as follows:

"As a result of investigation afforded you on August 23, 1994 at Waterloo, Iowa, this is to advise you that the following entry will be placed on your Personal Record:

September 1, 1994

Suspended for five (5) days for violation of Chicago, Central & Pacific Railroad's Safety Rules Notice, Safety General Rules A, Safety Rule 1 and 8 in connection with your failure to properly call a relief engineer for the vacancy at 0700 hours on Cedar Rapids, Iowa, Switch Engine at approximately 0400 hours on June 20, 1994, while employed as clerk/caller at Waterloo, Iowa.

Time of suspension to be determined at a later date."

At the outset the Organization raised a threshold procedural issue. Specifically, the Organization contends that the Carrier is in violation of Agreement Rule 35 - Discipline Procedures, which reads in pertinent part as follows:

"...(f) If disciplinary action is taken, a record of the evidence taken at the investigation will be furnished to the employee and his duly accredited representative. Appeals from the decision may be made in accordance with the provisions of Rule 36, except that four months shall apply instead of the nine-month period."

It is unrefuted on the record before this Board that the Carrier failed to provide a copy of the transcript to either the Claimant or her representative after the Investigation. It was not until its October 11, 1994 response to the General Chairman's appeal of Claimant's discipline that the Carrier conveyed the transcript to the Organization. That belated compliance does not meet the standards set forth in Rule 35(f) (*supra*). (Public Law Board No. 5439, Award 10) Such compliance is required if Claimant's representative is to have a fair opportunity for appeal. Accordingly, Parts 1 and 2 of the claim herein are sustained.

With respect to the request for compensation, it is unrefuted on this record that Claimant did not actually serve her five day suspension and lost no time as a result of the discipline assessed. Thus, Part 3 of the claim is denied. We will sustain Part 4 of the claim to the extent provided in the parties' Agreement.

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 4th day of March 1997.