

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 32206
Docket No. CL-33465
97-3-96-3-947**

The Third Division consisted of the regular members and in addition Referee George Edward Larney when award was rendered.

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

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-11536) that:

- (1) Carrier acted in an arbitrary, capricious and unjust manner in violation of Rule 24 of the Agreement when, by notice of September 9, 1994, it assessed discipline of ‘Ten (10) days actual suspension to be served from October 10, 1994 through October 21, 1994, inclusive. This will also serve as a Final Warning for any similar incidents in the future against Claimant, pursuant to an investigation held on September 1, 1994.**
- (2) Carrier shall now compensate Claimant an amount equal to what she could have earned, including but not limited to daily wages, holiday pay and overtime, had discipline not been assessed.**
- (3) Carrier shall now expunge the charges and discipline from Claimant’s record.”**

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.

Claimant, Leticia Cabral, entered service of the Carrier as a Reservation Sales Agent (RSA) at Carrier's Western Reservation Sales Office (WRSO) on January 18, 1991 and, at the time the events transpired that resulted in her being assessed a ten day actual suspension, she continued in her RSA position at the same location.

The record evidence reflects that on the morning of August 3, 1994, General Supervisor Michael Nunemaker, while in the course of performing spot monitoring of customer calls, plugged into Claimant's telephone line. According to Nunemaker, a customer call came into Claimant's position at 7:52 A.M. and Claimant, without acknowledging the Caller, immediately put this call on hold status. Nunemaker asserted in testimony at an Investigation conducted on September 1, 1994 that for one full minute, there was no conversation between the Caller and the Claimant even to the effect of Claimant advising the Caller to "please continue to hold." At 7:53 A.M. Claimant returned to the line and answered the call stating, "this is Amtrak, how may I help you?" Nunemaker related that thereafter, Claimant serviced this call to completion. Nunemaker asserted that Claimant's handling of this call violated the written policy pertaining to the "Special Instructions Governing Performance of Reservations Sales Agents" adopted by the Western Reservations Sales Office, specifically, Section 8 of the policy covering call quality and setting forth a general quality statement wherein, in pertinent part, the policy states:

"Use of the 'on-hold' button must be limited to looking up information only. A caller must never be left on hold for more than thirty (30) seconds without a 'Please continue to Hold' statement from the RSA."

Nunemaker asserted that given this part of the policy, Claimant improperly used her hold button in handling this first call. Nunemaker further related that said policy was reviewed with Claimant and that she signed a copy of the policy which was also given to her on April 14, 1994. Nunemaker related that after this first call, he continued to stay on Claimant's line for the purpose of further monitoring Claimant's performance. According to Nunemaker, he monitored a second call that came in at 8:00

A.M. and Claimant repeated the same procedure in handling this call as she had followed in handling the first monitored call, only this time she kept the Caller on hold for a period of three minutes. Nunemaker related he then communicated with Claimant over the headset instructing her to finish the call and then to see him in the General Supervisor's office. Nunemaker acknowledged Claimant followed his instruction and further acknowledged that Carrier received no complaints from customers regarding the subject two telephone calls.

In her testimony at the September 1, 1994 Investigation Claimant explained that on the morning of August 3, 1994 there had occurred a major derailment and when the 7:52 A.M. call came in on her line, she was recording information about the derailment from listening to the silent radio. Claimant avers that while she put the Caller on hold, she did so for a period of no more than 20 seconds and not a full minute as so asserted by Carrier. Claimant explained she was continuing to take down information on the derailment when the second call came in at 8:00 A.M. Claimant acknowledged she did not greet either Caller before putting them on hold, but explained the reasons she did not was due to the fact the information about the derailment was coming in too fast. Claimant concedes she may have kept the second Caller on the line for more than a minute before being told by Nunemaker to service the call, but she disputes that the length of time was three minutes as so attested by Nunemaker.

By letter dated September 9, 1994 Western Division Hearing Officer Carlos R. Hernandez informed Claimant that in his review of the evidence adduced at the Investigation it was his determination she was guilty of Carrier's Rules of Conduct which mandate that employees conduct themselves in a courteous and professional manner when dealing with the public, as well as other Amtrak employees. As a result, Carrier imposed a ten day actual suspension on Claimant.

Carrier asserts that Claimant's actions with respect to the handling of both monitored calls on August 3, 1994 equates to a mistreatment of customers and that Claimant's explanation of recording information regarding a major derailment is not an acceptable excuse for having violated its cited policy set forth in the Special Instructions Governing Performance of Reservations Sales Agents. Carrier asserts the essence of the RSA's job is to service customers and Claimant failed to do this in the two calls that were monitored by Nunemaker on the morning of August 3, 1994.

The Organization argues that the facts adduced at the September 1, 1994 Investigation do not substantiate the charge made against Claimant that she was rude and unprofessional to the two Callers in question by the way she handled both calls. The end result of both calls was that they were serviced in a satisfactory manner and, as proof of this, Carrier conceded it did not subsequently receive any complaints from customers in connection with either of the two subject calls. The Organization submits that Claimant's short delay in picking up the calls cannot be deemed to constitute "rude and unprofessional" conduct as Claimant was attempting to keep properly informed of pertinent information relating to train delays, information which her job requires her to be aware of in servicing customers. In addition to Carrier's failure to meet its burden of proof in this case, the Organization asserts that on a relative basis Claimant's transgression of not greeting the Callers before placing them on hold and then, for only a very brief period of time, was so minor in nature that in no way did it warrant such a severe discipline of a ten day actual suspension. As additional support that the discipline assessed was too severe, the Organization notes that the minor transgression committed by Claimant was, at the time it occurred, treated as a first offense given the status of her official work record and, as such, the suspension did not conform to the principles of progressive discipline. The Organization submits that in assessing such an excessive discipline for a first offense Carrier violated a cardinal principle of progressive discipline, which is that it should be corrective in nature, rather than punitive. The ten day actual suspension assessed Claimant, the Organization asserts, in light of all the prevailing circumstances, was clearly punitive in nature. Additionally, when compared to the lesser quantum of discipline administered by Carrier in cases involving the commission of more egregious offenses, the Organization argues Carrier failed to be consistent in applying discipline uniformly in the Claimant's case.

Ordinarily, on a finding substantiating a carrier's determination that the charged employee was guilty of committing the offense for which the disputed discipline was assessed, the Board would not intervene to alter the quantum of discipline assessed if it were also determined it was not imposed for arbitrary or capricious reasons or that, within the context of like offenses, the quantum of discipline could not be deemed to be excessive. In the case at bar, however, the Board is persuaded that although Carrier proved beyond a doubt that Claimant did, in fact, mishandle the two calls in question, and that such mishandling represented a violation of Section 8 of the cited controlling policy (Special Instructions Governing Performance of Reservations Sales Agents) it failed to support its position that under all the prevailing circumstances, the quantum of discipline assessed Claimant of a ten day actual suspension was proper and

appropriate. In consideration of all the argument advanced by the Organization that the suspension of ten actual days was excessive, we do not concur in Carrier's position that its assessment of such a suspension under the given circumstances was proper and appropriate. We find most persuasive the Organization's argument that Claimant's transgression of putting both Callers on hold without having first greeted them and, keeping at least one of the Callers on hold for between one and three minutes to be, on a relative basis, much less egregious than offenses which have resulted in the assessment of the identical quantum of discipline which was here imposed on Claimant. In this regard, we concur in the rationale set forth by Third Division Award 31491 where the Board stated in pertinent part the following:

"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."

In recognition of the economic reality that Carrier is entirely dependent on the good will of the traveling public for its share of the transportation marketplace and, in further recognition that Claimant's mishandling of the two calls in question could have been potentially harmful to Carrier's business, albeit in a de minimus way, the Board determines that Claimant's transgression warrants some degree of discipline that is more befitting of the principle that progressive discipline be corrective in nature rather than punitive. Accordingly, for the reasons discussed hereinabove, we find to reduce the ten day actual suspension to a five day actual suspension and a five day deferred suspension.

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 17th day of September 1997.