

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 36878
Docket No. CL-36888
04-3-01-3-424**

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

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(CSX Intermodal Terminals, Inc. (former CSX/Sea-Land
(Terminals, Inc. - Fruit Growers Express Company)

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization (GL-12754) that:

- (a) The Carrier acted in an arbitrary and capricious manner when it unjustly assessed discipline of 30 days suspension on Ms. Antoinette Pannell on July 18, 2000.
- (b) Claimant’s record be cleared of the charges brought against her on June 13, 2000.
- (c) Claimant be compensated for wage loss sustained in accordance with the provisions of Rule 43(f).”

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.

As a result of charges dated June 13, a Hearing was held on July 6 and by letter dated July 18, 2000, the Claimant, a Clerk at East St. Louis, was assessed a 30-day suspension for sleeping on duty, being on duty in a position conducive to sleeping and dereliction of duty.

We cannot address the merits of this dispute. In the brief 28 page transcript of the Hearing the Board counted 48 instances where the transcription of testimony states "unable to understand" - much of which came during the Claimant's testimony. Under the circumstances, we find that the Carrier did not give the Claimant a fair Hearing and the Board has an inadequate record to review. See Public Law Board No. 5761, Award 16:

"... A fair hearing also requires the production of a transcript that completely represents what was said at the hearing. We say this because the transcript not only serves as the basis for a determination as to whether the facts of record support the assessment of discipline in the first instance, but the transcript is also the principal document for prosecuting an appeal of discipline and the document that a reviewing authority must look to in determining whether in fact the hearing was fair and impartial..."

Given the state of the transcript and the lack of a fair Hearing, the suspension shall be rescinded and the Claimant made whole.

AWARD

Claim sustained.

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 February 2004.