

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Award No. 39526
Docket No. CL-40118
09-3-NRAB-00003-070388
(07-3-388)

The Third Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

**(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Springfield Terminal Railway Company**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Organization that:

- (a) Carrier violated the terms of the Clerks General Agreement, Rule 30 and others, when it assessed a suspension of thirty (30) days (deferred) to be held in abeyance for a period of one year, when it found Claimant Beth Brow guilty without proving the charges against her of not participating in an IP conference call several times without permission from a supervisor on May 15, 16, 17, and 18, 2006.**
- (b) The Carrier shall now remove the thirty (30) day deferred suspension and all reference of the charges against Claimant Brow from her personal work 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.

By notice dated June 1, 2006, the Claimant was directed to attend a formal Investigation on charges that the Claimant allegedly had excused herself from participating in the IP conference call on several occasions and without supervisory permission. After a postponement, the Hearing was conducted on July 10. By letter dated August 4, 2006, the Claimant was notified that as a result of the Hearing, she had been found guilty as charged, and that she was being issued a 30-day deferred suspension to be held in abeyance for one year. The Organization filed a claim on the Claimant's behalf, challenging the Carrier's decision.

The Carrier initially contends that at the fair and impartial Hearing, substantial evidence was presented to support the conclusion that the Claimant was guilty as charged. The Carrier asserts that there is no reasonable justification for the Claimant to have personally decided to stop participating in the IP conference call. It argues that after participating in this conference call for several months, the Claimant knew or reasonably should have known that it was her duty to continue to take part in the call. The Carrier points out that at the time of the Hearing, the Claimant still was participating in the conference call, and she never filed a grievance in connection with this issue.

The Carrier asserts that there is no evidence in the record to support the Claimant's assertion that she was answering the customer service line during all of these conference calls. The Carrier argues that the record also makes clear that the Claimant was required to be on these conference calls, regardless of the fact that she had other duties to perform, such as answering the customer service line. The Claimant even acknowledged that in the past, she had received customer service calls, and then got on the conference call.

The Carrier goes on to argue that both May 2006 e-mails from Carr illustrate the loss of good will that the Claimant's actions caused between the Carrier and this customer. The Claimant's absence from the conference calls clearly affected and/or concerned International Paper, otherwise Carr would not have contacted the Carrier regarding the matter. The Carrier emphasizes when a customer knows that

an employee has disregarded such a conference call, especially when the employee's regular participation was important to both the Carrier and the customer, it places the Carrier in an unfavorable light. The Carrier insists that the record shows that the Claimant was "available" and expected to participate in the conference calls.

As for the Organization's assertion that the charges were ambiguous, the Carrier insists that the record demonstrates otherwise. It contends that the Hearing notice contained all of the information required by the Agreement, so this procedural objection does not serve as a basis for overturning the discipline issued. The Carrier asserts that the Claimant was provided a fair and impartial Hearing. It emphasizes that at the end of the Hearing, the Claimant's Organization representative indicated that he had comments or criticisms regarding the conduct of the Hearing, but he refrained from specifically describing how the Hearing was not fair or impartial. The Carrier argues that without such specifics, it cannot address the Organization representative's position, and a review of the transcript demonstrates that the Claimant was afforded a fair and impartial Hearing. The Carrier asserts that there is no merit to the Organization's procedural argument.

The Carrier ultimately contends that the instant claim should be denied in its entirety.

The Organization initially contends that the Carrier violated Rule 39 of the parties' Agreement, which governs what information must appear in a Notice of Hearing. The Organization asserts that the notice in this matter identified only two witnesses were to be called, yet a significant portion of the transcript records testimony from a witness who was not identified in the notice. The Organization argues that on this basis alone, the Board should find that the Claimant's right to Agreement due process and a fair Hearing were impeached. The Organization emphasizes that the Claimant and her representative had no possible way of preparing for the testimony of the previously undisclosed witness.

The Organization then points out that the instant case was the second of three Hearings against the Claimant in a very short period of time. The Organization argues that the Carrier clearly set out to charge the Claimant with innocuous Rule violations with the intent of assessing more discipline as it proceeded. The Organization asserts that the Claimant obviously was found guilty before the Hearing began.

The Organization goes on to maintain that the Carrier failed to prove the charges against the Claimant and assessed discipline against her without regard for the facts. The Organization insists that a thorough review of the record demonstrates that the Claimant did not violate the cited Carrier Rules, nor did she violate any Agreement Rules. The Organization asserts that there never was any mention of the Claimant absenting herself from duty or entering time or wages on the payroll for time not worked.

The Organization emphasizes that the Carrier's entire case rests on the fact that the Claimant did not participate in conference calls with International Paper. The Organization argues that although it was proven at the Hearing that the Claimant previously had participated in conference calls, she never was specifically instructed to do so until after the Notice of Investigation was issued. The Organization points out that after she was instructed to be a party to the calls, the Claimant never failed to participate.

The Organization then points to the Claimant's testimony that she was answering other customer calls on the dates in question. The Organization insists that the Claimant could not have known she was doing anything wrong by not being party to the conference calls in question because she had not been instructed to participate on a daily basis and she was tending to the duties of her position, which the Claimant had been told was top priority. The Organization emphasizes that the Charging Officer acknowledged that participation in conference calls is not part of the Claimant's job description.

As for the e-mails from International Paper, the Organization emphasizes that the e-mails indicated that the Claimant was familiar with IP's needs and had the background information to proactively address its needs. The e-mails further described the Claimant as a tremendous asset not only to the Carrier but also to IP.

The Organization contends that the Carrier pressed charges against the Claimant implying that she refused a direct order. The Organization insists that nothing can be further from the truth. The Claimant was not insubordinate, and she participated in the conference calls when directed to do so. The Organization argues that the Carrier failed its burden of proving that the Claimant disobeyed the cited Rules. The Organization accordingly asserts that the discipline assessed was unreasonable, arbitrary, capricious, and excessive. The Organization emphasizes

that there was no intentional wrongdoing on the Claimant's part; she was handling Carrier business as instructed on the dates in question.

The Organization ultimately contends that the instant claim should be sustained in its entirety.

The Board reviewed the procedural arguments raised by the Organization, and finds them to be without merit. The Claimant was guaranteed all of her Agreement due process rights throughout the procedure.

The Board reviewed the evidence and testimony in this case, and we find that the Carrier failed to meet its burden of proof that the Claimant violated any of the Carrier's Rules when she failed to participate in a conference call on May 15, 16, 17, and 18, 2006. The record reveals that the Claimant had participated in that conference call on numerous occasions. There is no evidence, however, that she was ordered to participate in that conference call on the days in question. Moreover, the record reveals that the Claimant worked at her job answering customer calls and did not fail to give a full day's work for a full day's pay to the Carrier on the days in question. There is no evidence that the Claimant refused a direct order or in any way was insubordinate. There is additional evidence that the Claimant is still participating in the conference calls and the Carrier has received excellent feedback from the customer about the Claimant's performance.

A thorough review of the record makes it very clear that there is simply insufficient evidence to support the finding of guilt against the Claimant for any Rule violations. Consequently, we order that the discipline be removed from the Claimant's record and that she be made whole for any loss resulting from that discipline.

AWARD

Claim sustained.

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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 2nd day of February 2009.