

The Third Division consisted of the regular members and in addition Referee Carol J. Zamperini when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood (GL-10494) that:

1. Carrier violated the effective agreement when, following an investigation on August 28, 1989, it assessed discipline in the form of ten (10) demerits against the record of Ms. Georgia Ward, without just cause.

2. Carrier shall now rescind the discipline assessed and shall clear Ms. Ward's record of the charges placed against her."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes 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.

In January, 1981, the Carrier established a demerit system based on the concept of progressive discipline. Employees who violated Carrier Rules would be issued demerits based on the following: 1) gravity of the infraction; 2) circumstances surrounding it; and 3) the employee's past record. An employee could clear his record of demerits by maintaining a perfect record over one, two, three or four years. If an employee accumulated 100 demerits, he would be subject to dismissal. This policy was published and made known to the employees.

In the instant case, the Claimant was a Crew Caller on Sunday, July 30, 1989. As such, she was responsible for accepting the calls of employees who called in sick or called to indicate they were reporting for work following an illness. She then called any Extra Board personnel that were necessary to provide a complete complement of workers on the next shift.

On July 31, 1989, two employees, one a regular employee and one an Extra Board employee, reported for the same assignment. This necessitated sending the Extra Board employee home. When the Supervisor asked the regular employee, if he had marked up, he responded that he had called the Claimant the night before to indicate his intention to report for his scheduled assignment.

As a result of these circumstances, the Claimant was notified to appear for a formal Investigation to be held on August 28, 1989, at the office of the Assistant Superintendent-Administrative, Kirk Yard, Gary Indiana. According to the notice, the Hearing was to determine her responsibility in connection with the charge:

". . . while assigned to your 3:00 p.m., crew-caller position on July 30, 1989, you allegedly failed to properly perform your duties in that you did not mark up (Mr. H. . .) on his Monday, July 31, 1989, 7:00 a.m., GT-266 janitorial position."

The Investigation was held on August 28, 1989. The Claimant, despite receiving notice of same, was not in attendance. During the Hearing, the Claimant's Supervisor testified about the incident, including his conversation with the regular employee who had advised him that he indeed had called in and talked with the Claimant on Sunday, July 30, 1989, and told her he would be coming to work at 7:00 A.M. the next day. That employee did not testify at the Hearing.

It was on the basis of this testimony and the Claimant's past record that the Carrier determined her guilty of the charges and assessed her ten (10) demerits.

The Organization objects to the Carrier's refusal to call the regular employee as a witness at the Investigation. It claims the Supervisor's recanting of the conversation he had with the regular employee was hearsay testimony and therefore invalid.

The Carrier argues that an Investigation is not a judicial proceeding. The same quantum of proof is not necessary to support a charge against an employee. Given the Claimant's past performance as a Crew Caller and the gravity of the offense, the ten (10) demerits was reasonable.

The testimony of the Supervisor while sufficient to prove the Carrier had cause to charge the Claimant and conduct an Investigation, was not reliable to prove her guilty of the charges. It was hearsay evidence. The Organization is correct in its assertion that it was denied the right to cross examine the individual who had first hand knowledge of what occurred the night in question. This witness, an employee of the Carrier, was available and should have been called.

If the witness had been called and his testimony withstood cross examination then it would have been up to the Claimant to refute the evidence presented. Her failure to do so would have settled the matter. Without the regular employees testimony, however, there was nothing for the Claimant to refute except hearsay evidence.

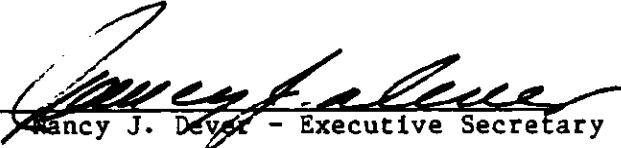
Under the circumstances, this Board believes the Carrier has presented insufficient evidence that the Claimant was guilty as charged.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1991.