

Award No. 3066

Docket No. CL-3059

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY & STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS & STATION EMPLOYES**

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

- (1) That Miss Gertrude Haynes be reinstated to her position as Secretary to Trainmaster and Road Foremen at Pueblo, Colorado, with full seniority rights intact and her record cleared.
- (2) That Miss Gertrude Haynes be compensated for all time lost account of her illegal dismissal from service of the Denver & Rio Grande Western Railroad.

OPINION OF BOARD: After 21 years of service for Carrier without previous disciplinary action, employe Gertrude Haynes was dismissed subsequent to an investigation based upon two charges:

1. Failing to comply with instructions to be present at, and take in shorthand, the proceedings of an investigation on January 4, 1945.
2. Changing method of delivery of mail addressed to Trainmasters and Road Foremen resulting in delay in delivery of such mail when Miss Haynes was on vacation.

As to the first charge the position of Carrier would have been stronger had the Trainmaster called this employe on the telephone upon her failure to appear, to ascertain the reason therefor, particularly because at first there was some question as to whether Trainmaster's own Secretary was to take the investigation. If then she had refused to serve, there would have been a clear right to assert that her conduct was wilful. Moreover, it appears that after the Trainmaster suggested to her that she might have to serve, information came to her that Miss Stewart, the Secretary of the Superintendent, had been requested to sit in at the investigation. When Miss Haynes learned this, she either concluded that her services were no longer necessary or she became obsessed with the thought of a more youthful secretary eventually displacing her. It appears therefore that her failure to appear at the hearing did not indicate a wilful refusal to obey orders so much as a temporary emotional upset, which though not excusable, is understandable. Laboring under this emotional upset, her judgment became warped and she did not manifest in her conduct the stability that should have characterized an individual's actions of her age and experience, but it is difficult to spell out of that conduct a wilful attitude.

Concerning the charge that employe was guilty of causing a delay in delivery of mail, we do not feel that the record justifies a conclusion of wilful conduct or an offense of a serious nature. The record does not indicate that the change made by Miss Haynes in having the mail of Trainmasters and Road Foremen put in a certain box was done for any other purpose than for convenience and dispatch in delivery. Because of her intimate knowledge of this change it no doubt would have been better judgment for her to have informed someone concerning it when she left on her vacation. But it doesn't seem that it should have been too difficult for Carrier to have discovered where this mail was so as to have eliminated the delay. At any rate, we do not see anything about this matter to warrant anything more than a warning or censure.

This Board is committed to the rule that it will not interfere with disciplinary measures unless it appears that the Carrier acted in bad faith, arbitrarily, capriciously or upon a fundamentally wrong basis. Awards 1632, 2863. The Board has modified the discipline where it has appeared too severe. Awards 413, 1443, 1033.

From a careful study of the record here, we feel that while employe was subject to discipline, the punishment is too severe. In reaching this conclusion we are not excusing or condoning employe's conduct. Carrier has a right to expect unswerving loyalty and complete cooperation from its employes. An employe who breaches the obligation he owes to Carrier subjects himself to discipline. We are merely suggesting that sufficient mitigating circumstances appear as to make the discipline of dismissal in this case disproportionate to the type of offenses committed.

While we feel that the employe should be restored to her seniority rights with Carrier we do not feel justified in restoring her to the same excepted position which she was occupying at the time of her dismissal. Rather she should be restored to service with full seniority rights, but without pay during her dismissal and not to the excepted position occupied at the time of her dismissal.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier was justified in disciplining employe because of misconduct but punishment was disproportionate to the offenses committed.

AWARD

That employe be restored to service in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 21st day of December, 1945.