

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY, (EASTERN DISTRICT)

**STATEMENT OF CLAIM:** Claim of The Order of Railroad Telegraphers on Union Pacific Railroad Company, Eastern District:

1. That the Carrier acted in an arbitrary and capricious manner when, on February 25, 1944, it dismissed from the service Rose G. Cohen, a regularly assigned teletype operator in the Omaha, Nebraska, General Telegraph Office for alleged violation of its General Rule No. 700—Insubordination—on February 22, 1944; and

2. That, as the said Rose G. Cohen was not proved guilty of the offense as charged, she shall be reinstated to her former position with seniority unimpaired and reimbursed for the wage loss suffered February 22, 1944—the date she was suspended—through July 28, 1944, the date she secured employment elsewhere—and compensated for vacations she would have earned for the years 1944 and 1945 had she not been unjustly dismissed.

**OPINION OF BOARD:** Claimant seeks reinstatement to the position of Printer Operator in the General Telegraph Office of the Carrier at Omaha from which she was discharged on February 25, 1944 after a hearing on charges of insubordination. That she was insubordinate at the time (February 22, 1944) and in the particulars charged is fully substantiated by the evidence taken at the investigation. She rests her claim for reinstatement principally on four grounds: (1) that the notice of the investigation did not advise her of the "precise charge" against her; (2) that she was not given an opportunity to cross-examine her accuser; (3) that the investigation was conducted in an irregular manner in that the burden of proving her innocence was cast upon her; (4) that the disciplinary measure taken by the Carrier amounted to condemnation on her past record.

First. The notice of the investigation was in general terms. There is no doubt, however, that Claimant, in fact, knew what the precise charges were. For, she had been suspended on February 22nd very shortly after the episodes occurred. Second. It is clearly shown by the record that Claimant, or her representative, was given an opportunity to cross-examine her accuser and all witnesses who testified. Third. The only basis we can find for this contention is that Claimant was called as the first witness at the investigation. Her testimony amounted to a plea of confession and avoidance. She admitted the essential facts upon which the charges were based but tried to justify her conduct. Fourth. It is perfectly proper for a carrier, in imposing discipline, to take into consideration the past record of an employe. In so doing it is not subject to the charge of arbitrary and capricious conduct unless the

disciplinary measures taken are wholly incommensurate with the offense under investigation. Awards Nos. 430, 3235, 3342.

We are satisfied from the record before us that the Carrier was fully justified in discharging the Claimant. See Awards Nos. 2216, 2297, 2863.

**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 employees 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 no violation of the Agreement has been established.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Date at Chicago, Illinois, this 7th day of February, 1947.