

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY
(Wilson McCarthy and Henry Swan, Trustees)

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

(1) That the Carrier acted unreasonable, unjust and arbitrary when it disqualified Miss Gertrude C. Haynes from position of Report Clerk, Pueblo Division Offices, Pueblo, Colorado, as result of investigation held August 22, 1946, and

(2) That Miss Haynes be restored to position of Report Clerk, Pueblo Division Offices, and that she be compensated the difference between what she was paid as Roadway Clerk and what she would have earned as Report Clerk.

EMPLOYEES' STATEMENT OF FACTS: Miss Gertrude C. Haynes first entered the service of the Denver & Rio Grande Western Railroad Company on May 17, 1924, and served in various capacities as clerk, general clerk and secretary; August 1946 Miss Haynes was serving in the capacity of Report Clerk, which position she was assigned to in January 1946.

Under date of August 22, 1946 as result of investigation held by the Superintendent, Miss Haynes received the following communication from Superintendent Herdman:

"As result of investigation held in Superintendent's office this date, you are disqualified on the position of Report Clerk.

"Under the terms of contract between the Railroad and the Organization which represents you, you will revert to the extra board until such time as you can place yourself on a position through bulletin."

The Organization appealed from the decision of the Superintendent and carried the matter to the court of last resort on the property, without an agreement being reached. Therefore, this matter is being submitted to the Third Division, National Railroad Adjustment Board for decision.

POSITION OF EMPLOYEES: The Organization feels strongly that Miss Haynes was unjustly deprived of her position of Report Clerk and cannot help but feel that she was discriminated against because of the fact that she

Q. What I mean is the rough draft she handed you with the file was supposed to complete the case and close it out, was it not?

A. That is true.

Q. What I am trying to develop is, was there any necessity for Miss Haynes having to have the file back in order to have additional information on the close out?

A. No, all the information should have been completed prior to the compilation of the ICC Form T report."

3. No justification of basis for claim.

The Carrier holds that the record clearly supports the Carrier's action in removing the Claimant from position of Report Clerk and that there was no animosity in such action. As a matter of fact, Claimant was given a great deal more assistance and cooperation than that customarily required by an average clerical employee. At no time has the Organization held that the Claimant properly performed her duties, and certainly the allegation that the Carrier was unreasonable, unjust and arbitrary when it disqualified the Claimant is not supported by the foregoing record. Item (1) of Employees' Statement of Claim was not before the Carrier during discussions on the property, that allegation having made its first appearance in the Organization's submission to your Honorable Board. Submitted as Carrier's Exhibit "B" is copy of letter dated August 24, 1946, from Mr. Joe Michelak, Local Chairman, to Mr. E. B. Herdman, Superintendent; a copy of Supt. Herdman's letter of August 29, 1946 to Local Chairman Michalek; copy of letter dated October 15, 1946 and Mr. W. D. Ryan, General Chairman, to Mr. J. E. Kemp, Assistant General Manager; and copy of Assistant General Manager Kemp's reply of November 8, 1946.

It will be noted from this correspondence no claim is made of any unjust treatment, or any claim based on violation of rules. It is simply an unsupported request that the Claimant be restored to position of Report Clerk with compensation for any monetary loss incurred. Nowhere, either in the investigation or in handling the case on appeal, has the Organization denied that the Claimant was not responsible for the voluminous errors and discrepancies in her handling of the Report Clerk's desk. Manifestly, therefore, there is no basis for claim, and the Carrier respectfully requests that your Honorable Board so decide.

OPINION OF BOARD: On January 28, 1946, Claimant displaced the occupant of the position of Report Clerk in the Pueblo Division Offices at Pueblo, Colorado. As a result of investigation, she was disqualified as Report Clerk because of her inability to do the work. The Organization contends that the action of the Carrier was unreasonable and arbitrary and requests that the position be restored to her and that she be paid all wage losses.

We have carefully examined the transcript of the evidence taken at the investigation which, because of its volume, cannot be detailed here. It shows that as a part of her duties as Report Clerk, she was required to prepare reports on train accidents and personal injury cases. The evidence shows that she made many errors in preparing these reports, some of which were on matters so simple as to indicate great indifference in the doing of the work. She was retained on the position for more than six months before the investigation was held. Complaints of superior officers became so common that the Chief Clerk was required to personally examine her reports before they left the office. She made the same mistakes over and over again and seemed unable to grasp the work of the position. The evidence of the Chief Clerk is that the Claimant was incompetent and wholly unfitted for the position. We hold that the evidence was amply sufficient to sustain the action of the Carrier in removing Claimant from the position.

The Organization contends that Claimant was not assisted by her supervisory officer in qualifying for the position, as required by Rule 8 (b). The evidence will not sustain such a finding. For more than six months she had served as Report Clerk without improving her efficiency materially during

that time. There is no evidence in the record that would indicate that Claimant would ever be able to fill the position satisfactorily. In fact, the evidence indicates that Claimant is incompetent to handle or indifferent to her responsibility as a Report Clerk. The evidence is ample to sustain the findings of the Carrier. No basis for an affirmative award exists.

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 there was no violation of the Agreement by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.