

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 erred in dismissing Miss Gertrude C. Haynes from service as result of investigation held September 7, 1946, and claim that she shall be returned to service with full seniority rights intact, and

(2) That she be paid for all time lost, and her record cleared.

OPINION OF BOARD: On September 7, 1946, Claimant was employed as Roadway Clerk in the Division Engineer's office at Pueblo, Colorado. On that date, after an investigation, she was dismissed from the service for conduct unbecoming an employee. The Organization asks that she be returned to service with seniority rights unimpaired and with pay for time lost.

Claimant entered the service of this Carrier on May 17, 1924, and occupied various clerical and stenographic positions from that date until she was dismissed from the service on January 8, 1945. She appealed to this Board and it was determined that she was subject to discipline on the charges lodged against her but that a dismissal was disproportionate to the offense committed. She was restored to service with seniority unimpaired, without the payment of wage losses. Award 3066. She was thereupon assigned to the position of Roadway Clerk in the Division Engineer's office on January 21, 1946. She claimed her seniority entitled her to the position of Report Clerk in the Superintendent's Office. Although Carrier's supervisory officers questioned her qualifications for the position, she was placed in that position on January 28, 1946, after conference with her Organization representative. On August 22, 1946, following investigation, she was disqualified as Report Clerk. An appeal from this decision was taken to this Board and the Carrier's action sustained. Award 3567, (Docket CL-3606). On August 23, 1946, she was again placed in the position of Roadway Clerk where she remained until she was again dismissed from service, which dismissal is the subject of the present appeal to this Board.

The report of the investigation is too voluminous to incorporate in detail into this award. We have read it carefully and have come to the following conclusions with respect to it.

Following the investigation held on August 22, 1946, at which time she was disqualified as Report Clerk, Claimant thumbed her nose at various employes and supervisory officers. She does not unequivocally deny these acts and her attempts to show that they were harmless, misunderstood gestures is not at all convincing. She entered into arguments with supervisory officers and made sarcastic and slurring remarks about her superior officers. The evidence is quite conclusive that she persisted in a course of conduct that made her a disturbing element in the office and created a situation not to the best interests of this Carrier.

While any one of the acts of misconduct charged might not under other circumstances warrant so severe a penalty, their cumulative effect is such as to indicate a deliberate intention to pursue an argumentative, rebellious and discourteous course. When this Board returned this Claimant to service as shown by Award 3066, it should have constituted a warning of the necessity for good conduct in the future and a direction that she become an exemplary employe. Instead, she has assumed a belligerent attitude and assumed that she had been exempted from disciplinary action. In so doing she not only jeopardized her own rights with this Carrier but she has harmed other employes who have occasion to seek reinstatement at the hands of this Board. Reinstatements granted by this Board contemplate future good conduct and a cooperative efficiency by the employe. It is not a license to engage in uncivil deportment and to disrupt the work of the Carrier such as has occurred here. The judgment of this Board in restoring this Claimant to service in Award 3066, has not been substantiated by the subsequent conduct of this employe. The Carrier had sufficient evidence before it to sustain the penalty imposed. The employe has forfeited any claim she may have had for leniency at the hands of this Board.

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 Employes 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 the Agreement was not violated.

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.