

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**John M. Carmody, Referee**

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**PARTIES TO DISPUTE:**

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

**THE PENNSYLVANIA RAILROAD COMPANY**

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

Blanche O. Valiquette, Clerk, Consolidated Office, Monroe Street Freight Station, Toledo, Ohio, be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from October 29, 1947, until adjusted. (Docket W-594)

**OPINION OF BOARD:** On October 29, 1947, Mrs. Blanche O. Valiquette was held out of service pending trial on charge of "Insubordination and conduct unbecoming an employee at Monroe Street Freight Station, Toledo, Ohio, September 29, 1947."

Trial was had and Mrs. Valiquette was dismissed on November 25, 1947. The immediate occasion for the charge arose out of a disturbance in the Freight Office shortly after 8 A.M. As she entered the office, preparatory to starting work, the Chief Clerk told her not to take off her hat and coat because he had been notified by the Freight Agent, Mr. Wolpert, to disqualify her. Until then she had been working position FM-3-F which she had acquired twenty-five days previously by right of seniority. This was the position she had started on when she entered the Carrier's employ approximately seven years earlier. She had worked it nearly two years on that tour of duty.

In the meantime she had bid in another position. This was abolished, but, upon appeal, it was reestablished and she was reinstated to it. It was abolished a second time after which she bid in still another position. When she was disqualified on the position at the end of one day, she again bid in FM-3-F. She was back where she started. She also had become a member of the Organization's Local Protective Committee. It was from this position FM-3-F that the Chief Clerk now told her she was disqualified. She asked him for a written statement of her disqualification. He refused. The Freight Agent, Mr. Wolpert, had not yet arrived. She said she would wait for him.

While she was waiting, Mrs. Balsmeyer, who apparently had been assigned to replace her, arrived and sat down at what had been, up to that morning, Mrs. Valiquette's desk. It was she whom Mrs. Valiquette had bumped some twenty-five days earlier.

When Mr. Wolpert arrived at 8:30, Mrs. Valiquette went into his office. The voluminous record, including a transcript of the subsequent trial, is replete

with contradictions with respect to what happened during the next few minutes. Mr. Wolpert says she "rushed" into his office and "demanded" written verification of her disqualification. That they had a heated argument can hardly be questioned. He refused to give her a written statement and showed her a copy of the Agreement which does not require it. She attempted to use his telephone. He prevented this. She left his office hastily, picked up the receiver of a telephone on a desk in the larger outside office, failed to get a prompt response, went to another desk, picked up another receiver and tried again. The record implies "rushed from one desk to another." This attracted the attention of other clerks. Mr. Wolpert, conscious of a disturbance, came out of his own office, took a telephone receiver away from Mrs. Valiquette, and admonished her for causing confusion in the office.

In spite of conflicting testimony, we have this colloquy during the trial. Questions are by Mrs. Valiquette and answers by the Freight Agent, Mr. Wolpert:

"Q. How long would you say I was in the freight office after you got in that morning?

A. From the time I arrived until you went out, I should judge, was about fifteen minutes.

Q. Did you request me to leave your office?

A. I gave you three choices when I came to you at Steele's desk, namely, to come into my private office, to go back and sit down and cease disturbing everybody in the office, or to leave.

Q. But did you say you thought I was in the office a total of fifteen minutes after you arrived?

A. Yes, including the time you were sitting back at the corner desk."

On November 25, 1947, Mrs. Valiquette was notified of her dismissal. The insubordination part of the charge appears to have grown out of Mrs. Valiquette's statement on the scene that she was not working for the Agent and would not take any orders from him. There is little doubt that she made this or an equivalent statement while in the office. She was, in fact, in the Agent's office and under pay. Insubordination is clearly indicated.

The Organization questions the fairness and impartiality of the trial. An examination of the record indicates that except for the fact that the Supervising Agent who conducted the trial interviewed all of the Carrier witnesses in advance of the trial, much as a prosecuting attorney would do, the general conduct of the trial differed little from those commonly conducted by this and other Carriers in similar cases. Mrs. Valiquette, acting as her own counsel, by choice, and accompanied by the Local and Division Chairmen, was allowed to make a lengthy and critical statement in her own behalf and to cross-examine witnesses freely. She appears to have been treated with courtesy throughout the trial. We doubt that the decision itself or the upholding of the decision upon appeal was influenced by the manner in which the trial was conducted.

Whether the drastic discipline imposed upon Mrs. Valiquette was justified is another matter. The general policy of the Board on questions of discipline is well known. A pattern was set in Awards 71 and 373, cited by the Carrier, although in consideration of the case here it is worth noting that in Award 71 the Board used the phrase "allowed a reasonable amount of discretion in deciding the competency and ability of employees." (Emphasis ours). That is not the issue here, nor are we considering the merits of the disqualification of the Claimant. That issue is in abeyance on the property. Award 373 is more general, i.e., "the judgment of the Board as to the propriety of dismissals will not be substituted for that of the Carrier." Many decisions support this doctrine. Awards 3986, 4069, 4326, 4298, 2531, 2769, 3182, 3715, 3944, 4449 have been cited, some of them applying to suspensions rather than dismissal.

There are exceptions, however, when, in the judgment of the Board there are extenuating circumstances.

We believe this is such a case. The entire incident, by testimony of the responsible Carrier official, the Freight Agent, Mr. Wolpert, in whose office it took place and who participated in it, lasted fifteen minutes. That Mrs. Valiquette was disappointed when she was told by the Chief Clerk that she was disqualified seems obvious. She knew the Agent, Mr. Wolpert. She had thirty minutes before his arrival to brood over the difficulties, real and imaginary, that she had experienced during her seven years' employment. The record indicates she magnified at least some of them; her own statement before the trial official leaves little doubt about this. Mrs. Balsmeyer had just bumped her. There is little doubt that she was angry when she went into Mr. Wolpert's office. She demanded a form of disqualification notice that the Agreement did not entitle her to. Mr. Wolpert was within his rights when he refused it.

We may speculate, however, whether a seasoned, responsible officer, experienced in dealing with employees possessed of widely varying personalities, could have prevented the incident or at least that part of it that took place in the outer office, with an employee who obviously was as tense and difficult as Mrs. Valiquette appears to have been at that moment. It seems to us that to have allowed the use of the telephone in the first instance would have been a small and reasonable concession under the circumstances and in the light of modern employer-employee relations. It was at that point that the flare-up really began.

That there was insubordination and unbecoming conduct, following refusal to use the telephone, is clear. A more orderly way was open to Mrs. Valiquette, through the Agreement, to seek relief. As a member of the Local Protective Committee she had an additional responsibility to use that method. But she was angry and obviously acted in haste. This was, in fact, a tempest in a teapot. Only a few employees witnessed it, although undoubtedly many talked about it. It was unfortunate but it was not a major crisis. No property was destroyed. No patrons were involved. The incident was over in fifteen minutes. That some discipline was warranted is clear — rational discipline. We conclude dismissal was unduly harsh and excessive, tending to give weight to her assertions of prejudice and lack of fair treatment on the part of her superiors which the Carrier denies. Awards 2496, 3548, 3859, 4058, 4079 and 4146.

**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 discipline was warranted but the penalty imposed was harsh and excessive and not warranted by the circumstances.

#### AWARD

Claimant, Mrs. Valiquette, will be reinstated with all seniority rights restored as of March 25, 1948, and compensated for all monetary loss sustained from that date.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois this 26th day of October, 1949.

## DISSENT TO AWARD NO. 4622, DOCKET CL-4593

This award holds that the Carrier should be monetarily penalized for taking disciplinary action and should re-engage an employe whom the record showed and the award itself declared was guilty of unbecoming conduct and insubordination in respect to the occurrence out of which the charges grew and upon which trial was held and discipline assessed. The record also showed and the award declares no impropriety in the trial and the appeal proceedings detrimental to the claimant's interest or of influence in the decision of discipline which resulted.

Further, the unbecoming and insubordinate conduct of the claimant on the occasion out of which the charges arose was clearly evidenced by the transcript of the investigation and trial. The award admits the actions of the claimant upon that occasion to have been unbecoming and insubordinate and also recognizes that the claimant as a member of the Employees' Committee was fully aware of her rights under the Agreement to adjust any grievance she may have through orderly action.

Yet withal such evidence of the claimant's violation of her due rights and responsibilities as an employe and of the integrity of the Carrier's actions in its procedures and determination of guilt and accompanying discipline, the award by a presumption that anger, arising out of prior grievances relating to discontinuances and disqualification on other positions, was justification for the insubordinate actions in which the claimant indulged in the immediate case.

Here is avowed substitution of judgment in a matter of discipline contrary to the principles which, by the continuity of their expression in Opinions of awards by succeeding representative neutrals serving up to this time with the Division, should not have been marred by the eccentric and arbitrary opinion here expressed.

The award stands out as an exception to all that is reasonable, proper and practical in the sound conduct of business. It can but have deleterious affect upon the morale of employes and supervisors alike, who day in and day out perform their duties without resort to insubordination.

The issuance of an award of such error and lack of justification is a misfortune.

/s/C. C. Cook

/s/C. P. Dugan

/s/A. H. Jones

/s/R. H. Allison

/s/J. E. Kemp