

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

Rita K. Handy, Station Cleaner, 30th Street Station, Philadelphia, Pennsylvania, be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from March 17, 1948, until adjusted. (Docket E-584)

OPINION OF BOARD: This is a discipline case involving Rita K. Handy, Cleaner, Broad Street Station, Philadelphia, Pennsylvania. Rita K. Handy was given a notice of trial to be held March 2, 1948, dated February 26, 1948 and charged with "Threatening another cleaner and causing disturbance among cleaners while on duty." The trial was held on March 2, 1948 and resulted in the dismissal of the claimant on March 17, 1948. The offense causing the discipline stated, "Threatening another cleaner while on duty."

Previous to the trial the complaining witness and other cleaners gave statements to J. Liesegang, Building Supervisor, on February 16, 1948 concerning the happenings of the evening of February 13, 1948. Rita K. Handy also voluntarily gave a statement as to the happenings to the Building Supervisor on this same date.

The Employees contend that (1) Rita Handy gave a statement before trial, which was later used against her, without being notified by the Carrier representative that anything she might say could be used against her; (2) she did not have a representative with her at the time of making the statement and the Carrier thus violated Rule 6-B-1; (3) that the evidence produced at the trial indicated only an exchange of words between two female cleaners and the dismissal was not warranted.

Rita Handy and Beatrice Conway had a misunderstanding on February 13, 1948, about the splashing of soap by Beatrice Conway on Rita Handy. Beatrice says that Rita wanted to take her outside and fight. This is denied by Rita. However, Mary Battle, another cleaner, in a statement and testimony at the trial, said she overheard Rita ask Beatrice outside to fight. So we have corroboration of Beatrice's testimony by Mary Battle. Other cleaners were present at the trial and said that they overheard words but could not say what was said. Mr. M. Korshin, Assistant Foreman, testified at the trial that he saw

Rita brushing her slacks and on inquiry by him Rita said that Beatrice splashed soap upon her. He heard no arguments.

The Board in answering the contentions of the Employee states that (1) Rita was not notified by the Carrier that any statement given might be used against her; that this is not a criminal trial and does not require an adherence to all the attributes of a trial of a criminal proceeding in the courts of law. The taking of statements is merely to ascertain if the charges warrant a hearing. This contention of the Employee has no merit. (2) Under Rule 6-B-1 it is not mandatory for the employee before giving a statement to have a representative accompany him or her. The rule states "if he desires to be represented", etc. Rita did not ask to have a representative present. (3) The evidence of the trial does show only an exchange of words and no bodily harm between Rita and Beatrice. There was some evidence produced at the trial to show that Rita had caused difficulties with fellow employees and superiors prior to February 13, 1948. However, as has been said in previous awards of this Board, it is not the function of this Board to substitute its judgment for that of the Carrier or to determine what we might have done if the matter had been before us in the first instance. The evidence in this case is sufficient to sustain a finding that Rita was guilty of the offense charged. It is not a proper function of this Board to weigh the evidence. If the evidence is substantial and supports the charge made, the findings of the Carrier will not be disturbed. The claim will be denied.

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 Employee involved in this dispute are respectively carrier and employee 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 basis for a claim exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of July, 1950.