

Award No. 5401

Docket No. CL-5463

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, 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: Blossie Baldwin, Station Cleaner, Broad Street Suburban Station, Philadelphia, Pennsylvania, be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from April 27, 1948, until adjusted. (Docket E-640.)

OPINION OF BOARD: On April 27, 1948 Claimant Blossie Baldwin, with seniority rights dating from January 5, 1943, her sister Alice M. Harmon, with similar rights dating from January 11, 1943, and her sister, Effie J. Harmon, holding seniority rights as of a like date, all held regularly assigned positions as station cleaners in the Carrier's Broad Street Suburban Station at Philadelphia, Pa., and, along with three other women, were members of a mop gang assigned to report for duty at such station at 11 P. M. on the date first mentioned.

Events preliminary to those directly involved in the controversy giving rise to the claim are not in serious dispute. The Carrier asserts and it is not effectively denied if, in fact, it is denied at all, that due to the poor caliber of work turned out by the cleaners at the station in question, a change in Foreman was effected on April 25, 1948 by the assignments of Wallace Huguley as the immediate supervisor over the cleaning gang, that on the day following he advised that the cleaners were ignoring his instructions and refusing to adhere to his orders, that he was instructed to call all those working under his supervision together before they started their tour of duty at 11:00 P. M. on April 27 and that Foreman Smith would give them a talking to, explaining they would be required to comply with Huguley's instructions and orders, and that this was done. Following this conference the mop gang left for the platform where they were to work. Shortly thereafter the two Foremen arrived upon the scene and the altercation resulting in the suspension and ultimate dismissal from service of the claimant and her two sisters commenced.

About the only other matters on which the parties agree are that in due time: (1) claimant and her two sisters, Alice M. Harmon and Effie Harmon, were given separate trials on identical charges stating, depending on the one to whom it was directed, that "On April 27, 1948, during your tour of duty as Station Cleaner at Broad Street Suburban Station, you refused to perform your duties when instructed to do so by Mr. Huguley,

further, when ordered to sign off duty by Mr. Huguley, you refused to comply and addressed him with abusive language, necessitating the assistance of Railroad Police to eject you from the property"; (2) the Carrier found the evidence adduced at the trials sustained each of the charges; and imposed a penalty on claimant and each of her two sisters of dismissal from its service; (3) an appeal was taken from this decision and not sustained; (4) a claim for monetary loss sustained as a result of the discipline imposed and for return to service with rights unimpaired was filed with the Carrier and denied, and (5) thereafter such claim was progressed to this Board as authorized by and in conformity with the requirements of the Railway Labor Act.

We have no desire to burden this Opinion with an extended dissertation of the facts disclosed by a long, tedious and somewhat unsatisfactory record. Our function in cases of the kind here involved, as we understand it, under Awards of this Division of the Board so well known and established that they require no citation or further consideration, is not to pass upon the credibility of the witnesses or weigh the evidence but to determine whether the evidence is substantial and supports the charges as made. If it is we cannot substitute our judgment for that of the Carrier and it is our duty to leave its findings undisturbed unless it is apparent its action is so clearly wrong as to amount to an abuse of discretion.

Mindful of the rule just mentioned we have reviewed the record and reached the conclusion there is ample substantial evidence to be found therein to support and sustain the charge made against the claimant in its entirety. The two Foremen testified she quit work and would not proceed with her duties when instructed to do so by Foreman Huguley. They further testified that when Huguley ordered her to sign off duty she refused to comply, addressed him with abusive language and caused such a disturbance as to necessitate calling on the station police to eject her from the railroad premises. They related other facts which if believed definitely indicated a wilful disregard for the orders and requirements of employees in whom the Carrier had vested supervisory authority. In addition, the Policeman, called to the scene, reported to his Chief of Police that when Huguley told them (the members of the mop gang) to leave they become boisterous and stated in substance that he had some difficulty in inducing them to comply with that order. A later statement made at the trial by this officer was not as emphatic but nevertheless clearly indicated that his former statement, which was also in the record, was not untrue. In the absence of impeachment, and there was none, all this evidence was competent and substantial and the Carrier had a right to believe it. That it did so is evidenced by its finding sustaining the charge. True enough, as the Organization points out, all six of the members of the mop gang, including the claimant, testified to a state of facts which refuted most of the statements made by the Foremen and standing alone would have required a finding the charge had not been sustained. Even so our province is not to say which of the witnesses should be believed or that the greater number were entitled to credence but to determine whether there was substantial evidence to sustain the Carrier's findings. That, as we have indicated, clearly appears from the record, hence we cannot disregard it.

Neither do we believe, as the Organization suggests, that this is a case where the evidence was so overwhelmingly predominating in favor of the claimant that it can be said the Carrier should have disregarded the testimony sustaining the charge and hence abused its discretion in failing to do so. Summarizing the record discloses the service rendered by this particular mop gang had not been satisfactory to the Carrier, that it had attempted to remedy the condition by assignment of a new Foreman, that this did not remedy it, and that an altercation arose almost immediately after a warning had been given at the Carrier's direction. It reveals that claimant and her fellow employees were resentful of what they termed spying on the part of Foreman Huguley and that after he came up all the gang quit and engaged in an argument. It shows an altercation ensued and that it

was serious enough the supervising authorities thought it necessary and did call the police in an attempt to bring it to a close. In short, viewed from all angles, it is apparent claimant and her five co-workers were resentful of and did not have the proper attitude toward the supervisory authorities the Carrier had seen fit to assign to supervise their working activities and they elected to pursue the wrong method of correcting what they deemed abuses of authority on the part of such officials. In the face of a situation such as has been heretofore outlined we cannot nor should we be expected to hold that the Carrier in finding that discipline should be assessed under the evidence before it acted arbitrarily, without just cause or in bad faith.

In leaving this point it should perhaps be stated we have considered and rejected claimant's contentions (1) the fact Carrier saw fit to discipline claimant and her two sisters without removing the other three members of the mop gang and (2) that a complaint made by one of the remaining members of the gang to the Carrier regarding alleged unfair conduct on the part of Foreman Huguley occurring several months after the altercation in question, compel a conclusion contrary to the one announced in the preceding paragraph. As to the first point we believe the fact Carrier did not discipline all involved is more indicative of fairness than unfairness. Besides it is clear from the record claimant and her sisters took a more active part in the altercation than the others. As to the second the Carrier denies conduct on the part of Huguley as complained of was unfair and submits evidence which makes that question highly debatable. Even if it was unfair to the complaining employe we would not be disposed to hold conduct of the Foreman occurring at that late date convicts the Carrier of abuse of discretion in the instant case.

Finally, it is argued claimant, as well as her two sisters, had an unfair trial because her sister, Effie Harmon, was silenced when she was asked questions pertaining to the prior attitude of Foreman Smith, not Huguley, toward her. It will be remembered this case and those of her two sisters depend upon the same evidence. Effie Harmon was asked the following question, "Do you have anything further you wish to inject in this trial, Effie?", to which she replied, "I just want to say Mr. Smith had been planning this for a long time." It is true other questions of similar character, calling for answers cumulative in nature, were asked her and that she was precluded from answering them on the ground they related to personalities and had no connection with the charges set out in the notice. No doubt it would have been better if the Carrier had permitted Effie Harmon to answer these additional questions even though they called for cumulative evidence. However, under the related facts and circumstances, particularly in view of the fact it was Huguley, not Smith, who was directly responsible for what happened, we do not think the fact she was precluded from doing so resulted in prejudicing either her rights or those of her sisters and hence did not result in a partial and unfair trial.

We do believe, however, a survey of the entire record discloses enough mitigating circumstances to warrant the conclusion claimant should have been disciplined by suspension instead of dismissal. For that reason her restoration to the Carrier's service with seniority rights unimpaired within ten days from the date of the adoption of this Award is directed without the payment of retroactive compensation.

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 under the facts and circumstances set forth in the Opinion suspension, not complete dismissal from service, was the proper disciplinary penalty.

AWARD

Claim as to retroactive monetary compensation denied. Claim for restoration to the Carrier's service sustained as set forth in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of July, 1951.