

Award No. 7177

Docket No. TE-7133

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad Company that:

- 1) Miss Sena J. Frandle, telegrapher, be reinstated to the service with full rights intact, and
- 2) The Carrier shall compensate Miss Frandle for all wages lost.

OPINION OF BOARD: On December 10, 1951, Claimant was working as a telegrapher. In the course of her duties on that day, it was necessary for her to make extra copies of a certain train order in order to have a sufficient supply for all trains leaving her station. In the course of re-copying the order, Claimant made a mistake which had the effect of describing the direction of a train as being opposite to what it actually was. An investigation was held in accordance with the appropriate rule and it was determined that Claimant had failed to comply with Operating Rule 209 which requires that each time a telegrapher makes copies of a train order he must repeat from the new copy to the train dispatcher to insure its accuracy. Subsequent to the investigation, Claimant was discharged on December 18, 1951.

There is no contention that a proper investigation was not held in accordance with the rule. There is complete agreement that the investigation revealed that Claimant failed to repeat the copied train order to the dispatcher in accordance with the rule, and that the order was incorrectly copied and issued. The sole issue is whether the Carrier was justified in imposing the severe discipline of permanent discharge for this offense.

Although the record is bare of any specific examples of discipline assessed in the past for similar violations, it can be inferred from various assertions therein that the usual penalty has been less than permanent discharge. Claimant argues that the Carrier has been discriminatory and arbitrary in not reinstating her to service after a reasonable period as it has done to others in comparable situations. Carrier argues that each case must rest on its own facts as to the proper discipline to be imposed, and that discipline assessed in other cases has no bearing on this one. In our opinion, the measure of discipline imposed for similar violations is one fact to be considered in

determining whether the discipline imposed in any particular case is reasonable; however, circumstances alter cases, and differing circumstances may justify a different result.

It is clear from the record that the Carrier considered the general mental condition, temperament and personality of Claimant in deciding what disposition to make of the case. There is evidence from her own writing that she has believed for some years that certain employees have persecuted her by malicious gossip and other means, and that this has made her nervous and upset and at times unable to concentrate on her work. She has written letters to supervisors on numerous occasions which indicate tension and discord between herself and other employees. With these considerations in mind, the Carrier, when faced with the necessity to deal with Claimant's mishandling of the train order on December 10, 1951, decided that Claimant was not qualified to perform the duties of her position and discharged her. We cannot say that this action by Carrier was arbitrary or unreasonable in the peculiar circumstances of this case.

Claimant argues that she was not charged with the nervous and temperamental conditions which really caused the severe discipline imposed upon her, and therefore that Carrier had no right to consider them. It is questionable whether these conditions are something with which one can be "charged" in the normal sense of that word in discipline matters. It is true, however, that a belief in Claimant's inability to perform her work generally, rather than her one rule violation, was the basis for Carrier's action; and that this question was not aired at the investigation. We feel that Claimant now should be given an opportunity to demonstrate her ability to perform satisfactorily in the position from which she was discharged; and if she is unable to do so, should be given an opportunity to qualify for any other position to which she is entitled under the rules.

We therefore decide that Claimant shall be restored, without compensation, to her former position with the Carrier with full rights intact, subject to passing the physical and any other examinations required for that position within 30 days from the date of this Award; and that in the event of her failure to qualify for that position she shall be given an opportunity to qualify for any other position to which she is entitled under the rules.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing thereon;

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 the penalty of permanent discharge should be modified in accordance with the Opinion.

AWARD

Claim disposed of in accordance with Findings and Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 23rd day of November, 1955.