

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated the Agreement when, on March 21, 1958, it dismissed Mrs. Nancy S. Gordon from service for "conduct unbecoming an employe".

(b) Claimant, Mrs. Nancy S. Gordon, shall now be restored to Carrier's service with seniority, vacation, and all other rights unimpaired and she shall be compensated as provided in Rule 40 (a) of the effective Agreement.

OPINION OF BOARD: The claim is that the Carrier violated the Agreement by dismissing Claimant for "conduct unbecoming an employe". The conduct consisted of habitual and continued abusive, critical and unfriendly language toward Claimant's associates, which eventually resulted in their objection to working with her. The final episode was a series of telephone conversations on March 14, 1958, in which she used insulting, indecent and abusive language toward fellow employees.

On March 21, 1958, the Manager of the Communications Department sent Claimant a letter which stated: "Confirming conversation with you this A. M., you are hereby discharged from the service for conduct unbecoming an employe." The Local Chairman requested an investigation under Rule 40(a) by a letter in which he also asked for "the specific charge against Mrs. Gordon".

At the hearing on March 27, 1958, the local chairman objected that the Carrier had not complied with his request for a "specific or precise charge". The officer conducting the hearing said: "I am willing to give you the information making the charge specific and postpone the hearing until some later date". After further discussion the local chairman stated that he was willing to proceed with the hearing, thus waiving the objection.

Complaint is made here that Claimant's immediate superior officer, the Manager of the Relay Telegraph Office, who discharged her, ordered the

investigation and testified thereat, did not also preside. His immediate superior, the Superintendent of Communications, conducted the investigation and sustained the discharge, and appeals were taken to the Assistant to Vice President, and finally to the Assistant Director of Labor Relations, both of whom sustained the discharge.

The objection is unusual that the accuser and witness was not also the judge; furthermore it was not made on the property. However we shall examine it briefly. It is based on the provision of Rule 40, paragraph (b) that—

“Employees * * * having a grievance, may always submit their case to **their superior officer** for consideration and review, and shall have the privilege of appealing to **the next ranking officer**, provided such appeal is made in writing within thirty (30) days after the reviewing officer has rendered his decision.”

The objection is that this procedure “precluded Claimant Gordon’s rights to the full avenue of appeal contemplated by the provisions of paragraph (b) of Rule 40”. If the provision applies to this situation, Claimant Gordon was not deprived of her full avenue of appeal contemplated by it; for she had, not merely the one appeal to the next ranking officer, but two successive appeals, to the two next ranking officers. Furthermore, the discipline rule is paragraph (a) of Rule 40, under which the Local Chairman requested the investigation, as above noted. It provides that discharges shall be made only for cause, and that if request therefor is made within five days an investigation shall be made “by the proper officer”. We cannot say that the officer discharging Claimant was the only proper officer to hold an investigation of his own act, or that his immediate superior was not a proper officer to hold it.

While Claimant denied the charges in toto, the testimony of some ten of her fellow-workers, most of them women, fully established the charges.

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 the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of July, 1959.