

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

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

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks:

1. That the arbitrary dismissal from service of Mrs. Von Delle Saxon, Interline Clerk in the Comptroller's office at Norfolk, Virginia as of the close of business 5:00 P. M. March 31, 1958, was violative of rules of the parties' agreement effective November 1, 1952.

2. That Mrs. Saxon be reinstated to service with all employment rights restored and paid for all wage loss sustained retroactive to April 1, 1958.

OPINION OF BOARD: This is a discipline case. The record discloses the service record of Claimant Mrs. Von Delle Saxon to be as follows:

Claimant entered the service of the respondent in 1938.

August 1, 1944 she voluntarily transferred to the Maintenance of Way Department, a separate seniority District.

October 14, 1947 she was dismissed from the service for failure to carry out instructions, insubordination and unsatisfactory service. Subsequent to her dismissal the General Chairman appealed to the officer designated by the Carrier to handle cases on appeal, to give Claimant another chance, to restore her to service without pay for time lost on a leniency basis. The Appeals Officer after considering this request of the General Chairman agreed to restore her to service, on certain specified conditions, agreed to in writing, which contained among other stipulations that:

(1) Claimant would be restored to the service on a leniency basis, and without pay for time lost, and would be given a seniority date of August 1, 1944.

(2) Claimant would not be restored to her former position from which she was discharged but would be placed in the Accounting Department.

Prior to her entering the service in the Accounting Department the General Auditor had a conference with Claimant, at which time she was fully advised of what was expected of her. This conference was reduced to writing, copies furnished Claimant, to which she endorsed that she would fully comply with said instructions.

November 17, 1947 Claimant was assigned a position in the Bookkeeping Section of the Accounting Department.

September 15, 1950 Claimant was charged in writing that her efficiency since June 12, 1950 was deplorable, that her absenteeism from work was questionable and that her inability to follow instructions was glaringly apparent. She was given a hearing on these charges and as a result thereof, was dismissed from Carrier's service.

Again the General Chairman made an earnest appeal to the Appeals Officer to again extend claimant leniency and restore her to service without pay for time lost. The Appeals Officer finally agreed to restore her to service with the respondent under certain conditions, which were reduced to writing and agreed to by the General Chairman. These conditions are set forth in the record and among others stipulated that:

(1) Claimant would be restored to service on a leniency basis without pay for time lost.

(2) That she would not be restored to her former position, and that it would be agreeable to Chief Clerk Owen in charge of the Department from which she was dismissed. Chief Clerk Owen raised no objections.

(3) That she would be placed on a position in the Freight Accounting Department under the jurisdiction of Chief Clerk Wagner, provided (a) that Chief Clerk Wagner would raise no objections to her working in his department and (b) that she could qualify for a forthcoming vacancy. Chief Clerk Wagner agreed to her working in his department if he would be given an opportunity to talk with her first, in the presence of others and the Local Chairman's attention was directed to her frequent absence, the necessity for following out instructions and to properly perform the work. On December 7, 1950 the Appeals Officer called Claimant to his office and in the presence of the General Chairman, explained to her what was expected of her, if she wanted to remain in the service. The Agreement was entered into between the Appeals Officer and the General Chairman, who agreed to same and affixed his signature thereto. Mrs. Saxon, Claimant, agreed to abide by the stipulations agreed to between the Appeals Officer and the General Chairman, she having been provided a copy of said Agreement.

December 18, 1950, Claimant was returned to the service of the Respondent in the Freight Accounting Section and the period she was out of service, September 30 to December 18, 1950, would serve as a suspension.

She continued to work in the Freight Accounting Department until August 11, 1954, when she was removed from the service because of unbecoming conduct, abusing other employees in the office and threatening her fellow employees with bodily harm. Hearing was set for August 24, 1954. The General Chairman requested that the hearing set for August 24, 1954, be held in abeyance and that Claimant be given a year's leave of absence for medical treatment to correct a condition she was apparently suffering from. The Appeals Officer, in the hope of being able to help Claimant, agreed to grant her a leave of absence of one year, which agreement contained several conditions, one of which provided:

"It is further understood that under no conditions shall Mrs. Saxon be permitted to return to the service prior to September 1, 1955, and then only under the conditions set forth in Section 1 (b) (1) above; nor shall there be any claim for time lost as a result of the time Mrs. Saxon is out of service under the provisions of the leave of absence herein granted, **nor shall any claim be made predicated on the fact that the investigation as provided for in Rule 18 (b) was not given in accordance with such rule, such investigation at this time being waived, and recessed and held in abeyance as hereinabove provided.**" (Emphasis added)

This Agreement bearing date of August 25, 1954, was signed for the Brotherhood by J. E. Cobean, General Chairman; G. C. Reveille, Comptroller, and approved by J. S. Cox, Assistant Vice-President.

Claimant was called to the office, the Agreement was fully explained to her, in the presence of the General Chairman. She was handed a copy of the Agreement, which she endorsed over her signature providing that:

"I have read and understand the conditions set forth above, and accept and agree to abide by same, particularly the requirement in Section 1 (a) as to undergoing necessary medical treatment."

Claimant was returned to the service September 19, 1955, in accordance with the stipulations contained in the Agreement of August 25, 1954, but shortly thereafter indulged in her previous failures, indulging in excessive absenteeism, thus neglecting her work.

On April 17, 1957, the Director of Personnel wrote her a letter calling her attention to her absenteeism, and twice during the month of September 1957 called her to his office, on the second occasion the Local Chairman was present. The Director of Personnel discussed with her past performance, and her attention was again directed to her Agreement of August 25, 1954. On October 3, 1957, the Director of Personnel directed a letter to the General Chairman in which he quoted his letter to Claimant dated April 17, 1957, and also directed the attention of the General Chairman to the efforts he had made in September in personally contacting Claimant to get her straightened out. He requested that the General Chairman, on his next visit to Norfolk, have a serious talk with Claimant, in an effort to improve her conduct.

Under date of March 31, 1958, Comptroller G. C. Reveille wrote Claimant Saxon advising that at the close of business on that date her services with the Company were being terminated, due to the fact that she had failed to observe the provisions of the letter-agreement dated August 25, 1954, in that she had failed to conduct herself in a normal manner and satisfactorily

perform her work, and, also, had engaged in a similar excessive amount of absenteeism since returning to service in the latter part of 1955. She was further advised that if she desired an investigation, same would be granted to her. The investigation was scheduled for 10:00 A. M., April 9, 1958, and postponed account of the illness of the General Chairman and subsequently held on April 16, 1958. Claimant was found guilty and her dismissal of March 31, 1958 sustained.

We have carefully reviewed the transcript of the investigation and the entire discipline record of claimant since she entered the service of Respondent and find nothing therein that would justify this Division substituting its judgment for that of the Carrier. It appears that the Representatives of the Brotherhood and the Carrier went to great lengths to help Claimant improve her conduct and thereby remain in Carrier's service, without success. Consequently, we find no valid reason for disturbing the action of the carrier and claim must 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October, 1959.