

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

1. That the dismissal from service of Mrs. Clydia M. Simmons, an elevator operator in Carrier's General Office building at Dallas, Texas on September 17, 1958, was an arbitrary and/or biased act and without just cause; also violative of the spirit and intent of rules of agreement with Carrier revised as of March 1, 1954 that govern the working conditions of the employees;

2. That Mrs. Simmons be reinstated to service with all employee rights restored and compensated for all wage loss sustained since September 17, 1958.

OPINION OF BOARD: Charges were filed by the Carrier against Claimant Clydia M. Simmons on September 17, 1958, alleging improper performance of her duties as elevator operator and further alleging the subsequent refusal by Claimant to provide the Assistant General Office Building Foreman with certain information requested by him relevant to Claimant's operation of her elevator. Soon after the charges were filed an extensive formal investigation or hearing was conducted thereon. Consideration of the entire Record reveals that Claimant was given a fair hearing and that while there was considerable conflict in the testimony taken at that hearing, the Carrier did submit evidence providing substantial support for the Carrier's conclusion that the charges were sustained. See recent Third Division Awards 9322, 9230, 9045, 8725. In Award 9199 this Board acting without a Referee, noted the "Board's well-established principle that it is not our function to weigh conflicting testimony, determining the credibility of witnesses or upset findings of fact based upon competent, if contradicted, evidence".

In reaching the conclusion that the Carrier's dismissal of Claimant was not unreasonable or arbitrary, the Board places a great deal of weight upon

the fact that Claimant's past record had been very unsatisfactory. See Award 7018. The Carrier had been very patient with Claimant and had shown her leniency in the past. In spite of Claimant's long employment with the Carrier, the evidence of Record provides no adequate basis for disturbing the Carrier's action.

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;

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 the action of the Carrier will not be disturbed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July, 1960.