

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Charles W. Webster, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad, that:

1. Carrier assessed unnecessarily harsh disciplinary action against Miss Rose M. McGimsey, agent, Solomon Rapids, Kansas when on May 1, 1956, she was dismissed from service of the railroad.
2. Carrier shall now reinstate Miss McGimsey to service with fully accumulated seniority and with the right to return to Solomon Rapids as agent.

**OPINION OF BOARD:** The claimant, Miss Rose M. McGimsey, had been employed by the Carrier since 1942 and was regularly assigned as agent-restricted operator at Solomon Rapids, Kansas. On April 27, 1956, a Friday, claimant left work at 1:30 P. M. although her work day was from 8:00 A. M. to 5:00 P. M.

On Monday, April 30th, she was removed from service and served with a notice of an investigation to be held concerning her being absent from her station on April 27th. On Tuesday, May 1 the investigation was held with the claimant being present. She also had representation.

On May 3, 1956 the claimant was notified that she was dismissed from service on the grounds of being absent from work and for violation of Rules N and Q.

These rules provide:

"N. Courteous deportment is required of all employes in their dealings with the public, their subordinates and each other.

"Employes who are careless of the safety of themselves and others, negligent, insubordinate, dishonest, immoral, quarrelsome or otherwise vicious, or who do not conduct themselves in such a

manner and handle their personal obligations in such a way that their railroad will not be subject to criticism or loss of good will, will not be retained in the service.

"Employees must not enter into altercations, play practical jokes, scuffle or wrestle on company property.

"They must show on time-slips, time-books, or payroll required information as to work actually performed."

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"Q. Employees must report at the appointed time, devote themselves exclusively to their duties, must not absent themselves, nor exchange duties with or substitute others in their place without proper authority.

"Passenger trainmen in uniform must remain in proper attendance to their trains at terminals until passengers are on and off, unless relieved by connecting crew.

"Train, engine and yard men must not, while on duty, read magazines, newspapers or other literature not concerning their work."

The other relevant facts developed at the investigation were that the claimant had previously left her post on Friday afternoons so she could catch the last train home and that this had been at times done with authorization of her superiors. She did admit that she had no such authorization at this particular time. The Carrier also introduced evidence that she had submitted a time claim for eight hours for the day in question.

While this claim is processed here as one involving unnecessarily harsh discipline an examination of the record shows that the claim on the property was handled as a leniency claim.

The first correspondence after the letter of dismissal was from the claimant herself in which she requested reinstatement stating that she would not claim time for days lost.

On May 25, 1956 the Local Chairman wrote the Carrier stating that he hoped the Carrier would see fit to reinstate the claimant. In his letter he stated:

"It is hoped that you will comply with her request because it is felt that she has profited by her experience and is willing and able to be a valuable employee, and will justify any leniency you find suitable to extend."

On May 9th of 1957 the General Chairman wrote to the Assistant General Manager concerning the reinstatement of the claimant. In his letter he stated:

"While I believe that the Carrier should pay every employe in full for the services performed under the terms of the Agreement, you may be sure that I do not approve of any employe giving less service than they are paid to give, and the basis for the discipline assessed against this employe may have justified her dismissal.

I honestly believe, however, that she has fully recanted and that she will not again be guilty of unsatisfactory work. I also believe that her punishment has been excessive and I feel that you would want to be fair to all the employees working under you. Will you not review this case and see if you can find justification for her reinstatement."

On October 3rd, 1957 he again addressed a letter to the Carrier in which he stated in part:

"Apparently you may be thinking that it is the intention of the Organization to file claim for time lost. I want to assure you that this request is for reinstatement with seniority rights on a leniency basis, and without claim for time lost. It is not our position that the dismissal was unfounded and we are requesting reinstatement solely on the basis of leniency."

On March 12, 1958 the General Chairman again wrote to the Assistant General Manager concerning this case and in that letter he stated:

"If you will recall I stated to you that I did not approve of employees not performing their work but that it was my belief that the discipline assessed here was unnecessarily harsh and that she should be given a chance on a leniency basis to show what she would do about the alleged shortcomings.

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"Please consider this letter as our appeal to the decision given by Supt. Hobbs and our request for reinstatement of Miss McGimsey on a leniency basis."

Finally, on March 28th, 1958 the General Chairman wrote to the Chief Personnel Officer concerning the matter. In this letter he stated:

"Herewith appeal case from the Northern Kansas Division appealing decision of Assistant General Manager Holzmann in his letter of March 17, 1958, file 209—McGimsey, declining our request for the reinstatement of Miss Rose M. McGimsey to service as Agent on the Northern Kansas District.

"We have tried to cooperate in this matter and in our conference with Mr. Holzmann and in our letter to him only asked that Miss McGimsey be restored to service on a leniency basis. We feel that the discipline assessed here has been unnecessarily harsh and excessive. We are therefore asking that you consider the matter and advise us that she is being reinstated."

In light of the above correspondence it is the determination of this referee that the parties did in fact handle this claim at all times on the premises as a leniency claim. This being true this Board has consistently held that it is beyond its power to go into the merits of the controversy no matter how meritorious the claim is.

As was stated in Award 6085:

"There is a vast difference between the correction of an excessive penalty and reinstatement on a leniency basis. We can correct an excessive penalty because the imposition of such a penalty is a violation of those provisions of the agreement which are adopted to protect employes from arbitrary, capricious or discriminatory discipline by the carrier. Reinstatement on a leniency basis is a discretionary remission of an appropriate penalty. We do not remit penalties on a leniency basis because we have no power or right to exercise managerial discretion."

See also Awards 8478-8474 (Coburn), 7468 (Coffey), 8675 (Vokoun), 8991 (Hornbeck), among many others to like effect.

**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 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 claim should be dismissed.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of June, 1961.