

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5526) that:

(1) The Carrier violated the rules of the Clerks' Agreement of December 1, 1956, as amended, when it arbitrarily and capriciously dismissed Secretary B. Frances Capien, Office of Freight Agent, Macon, Georgia, from its service following investigation held on July 1, 1963, and that, therefore

(2) Miss B. Frances Capien shall now be restored to her position of Secretary, Office of Freight Agent, Macon, Georgia, Transportation Department, with seniority and all other rights unimpaired and

(3) Miss Capien shall now be compensated for all wage loss sustained from and including Friday, June 21, 1963 and continuing thereafter for each work day until she is restored to service.

OPINION OF BOARD: Miss B. Frances Capien, the Claimant, was dismissed from service by notice given in Carrier's letter dated February 21, 1963, after a discipline investigation had been held on the property. Following the dismissal Carrier advised the Claimant that her group insurance was cancelled and suggestion was made that her policy be converted. Claimant also was advised that if she should re-enter the Carrier's employ, it would be necessary for her to make application for more insurance as of the date of re-employment, since her group insurance would not be automatically reinstated.

Under the subject group insurance plan the Carrier pays a portion of the premiums and the employees pay the balance through payroll deduction. The Carrier's employment application form contains a statement that if employed, the individual will make application for group insurance, will continue such insurance while in Carrier's employ—so long as the group insurance remains in effect, and that the Carrier is authorized to make payroll deduction for the amounts due for insurance premiums. Miss Capien had

signed the subject form at the time she originally entered Carrier's service in 1944.

By letter dated April 24, 1963, the Carrier's Director of Personnel notified the Organization that Miss Capien would be restored to service on her former position on a leniency basis, effective May 1, 1963, with seniority and all other rights unimpaired, but without pay for time lost -- the lost time to serve as discipline. The Claimant was restored to service as of May 1, and a few days thereafter a Carrier representative instructed her to fill out and sign an application for group insurance. She refused to do so, although she was so instructed twice in writing. Her explanation was that following the cancellation of her group insurance as a result of her dismissal she had obtained insurance with a different insurance firm, and did not desire that her group insurance be reinstated "at this time." The Carrier then charged the Claimant with refusal to comply with its instructions. An investigation was held on this charge and by letter dated July 3, 1963 the Carrier notified Claimant of her dismissal.

The Claimant was given a fair and impartial investigation. The record conclusively shows that she repeatedly refused to comply with proper instructions of Carrier's representatives. There is no showing that these instructions differed in any way from those the Carrier has given similarly situated employees over the years. The Claimant clearly was guilty of insubordinate conduct and, in view of her previous record, Carrier cannot be said to have acted in an arbitrary or capricious fashion by assessing the penalty of dismissal.

Both parties have raised various procedural questions. But in view of our conclusion on the merits, it is unnecessary to pass upon these questions.

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 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 30th day of April 1965.