

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Arnold Zack, Referee

PARTIES TO DISPUTE:**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES****CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY****STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-5797) that:

(1) The Carrier violated the Clerks' Agreement when it acted in an arbitrary and capricious manner in dismissing employe, Mrs. J. M. Morris, from the services of the Carrier on September 19, 1964.

(2) That the Carrier shall be required to reinstate Mrs. Morris to the service of the Carrier with seniority and all other rights unimpaired and the Carrier shall be required to compensate the employe, Mrs. Morris, for all wages lost as a result of her dismissal from September 20, 1964 and each work day thereafter to the date she is restored to service.

OPINION OF BOARD: Mrs. J. M. Morris, a switchboard operator, has been with the Carrier since 1957. En route to work on September 19, 1964 she claims she had a flat tire which caused her to miss her 7:00 A.M. shift starting time. Not being near a telephone she was unable to inform the Carrier of her delay prior to 7:10 A.M. the time by which her supervisor would have assigned an extra operator to her position. Accordingly she says, she returned home and attempted to telephone Wire Chief Silvus at his home to inform him of her situation. She admits that she did not attempt to telephone the Burlington PBX Operator at all and that she did not telephone Silvus at his office until sometime after 10:00 A.M. She was then told by him that she was permanently being pulled from service.

On September 29, 1964 she was sent a dismissal letter. On October 1, 1964 she wrote the General Superintendent Communications requesting a hearing on her dismissal, which was held on October 12, 1964. On October 30, 1964 she was informed of her termination by the General Superintendent Communications. A claim alleging a violation of the Clerks' Agreement was filed with the Terminal Superintendent on November 17, 1964 and replied to by him on November 30, 1964 declining the claim and giving rise to the instant dispute.

The Organization contends that the Carrier did not act promptly in notifying the Claimant of her termination following the hearing, and that there

was insufficient evidence to sustain the dismissal. Claimant successfully proved, it asserts, that she had had a flat tire, that she was unable to notify the Carrier of her absence before the start of the shift, and that she had tried unsuccessfully until 10:00 A. M. to reach Wire Chief Silvus. In view of the proof that she was unavoidably absent from her position at the start of work, and the fact that the Carrier had not supported its allegation that employee was habitually late to work, the Organization concludes that she should be reinstated with compensation for all earnings lost.

The Carrier contends that its dismissal action was proper. It points out that the Organization did not direct its claim to the proper authority within the management, and that she was unable to prove that she was unavoidably detained from her position on the day in question. Even if her story of a flat tire is accepted as truthful, the Carrier continues, it is clear from her own admissions that she made no effort to contact anyone on the switchboard or at the plant during the first four hours following the alleged flat tire. In view of this dereliction of duty and in view of her past record, the Carrier concludes that it acted properly in sustaining the dismissal order.

Two preliminary questions are raised by this case. The first is whether the claim was directed to the proper authority within Management. Although the initial request for a hearing was directed to the General Superintendent Communications, Claimant directed her claim of November 17, 1964 to the Terminal Superintendent who had in fact conducted her investigation. It is true that on November 24, 1964 the Carrier set forth instructions to be followed in filing claims and grievances from clerks in the Communications Department, but that letter post dates the claim of November 17, 1964. The reply from the Superintendent on November 30, 1964 not only specifies receipt of the November 17th claim but also exercises the authority of the Carrier in declining that claim. If that authority is adequate to refuse the claim, it must be adequate to have received the claim. Indeed, there is nothing in that letter even referring to the Carrier's instructions of November 24, 1964. Accordingly it must be held that here, unlike in the cases cited by Carrier, it acquiesced in accepting the claim through the office of Terminal Superintendent.

The second procedural matter concerns the promptness of notifying the Claimant of her dismissal following the investigation. The time lapse in this instance case was not so great as to be unreasonable. (Award 13319)

Turning to the merits, even if the Claimant's excuse of a flat tire be truthful, we are nonetheless unconvinced that she did all within her power to live up to the responsibilities of her position. It is clear that the Claimant made no effort to inform the Carrier of her anticipated delay between 6:30 A. M., the approximate time of the flat tire, and 7:10 A. M. the deadline for her reporting for work. Although being on a highway during that period might have precluded her contacting her employer the reasonable course of conduct, once the repair had been made, approximately 15 minutes after the start of the shift, would have been to proceed to her position, and attempt to undertake her job for the rest of the shift, or at least to explain her delay. Instead she returned to her home, and even then failed to telephone into the switchboard to explain her absence. Although she claims that she tried to reach the Wire Chief at home, it was not until nearly four hours after the breakdown, that she thought to telephone the Carrier's offices.

We find that the Carrier acted properly in imposing a discipline upon the Claimant in view of her callous attitude, and particularly in the light of similar

prior infractions evident in her record. Claimant had been specifically warned that a further failure to protect her assignment would result in her being held out of service. However, in view of the fact that she had not been subjected to any penalty prior to this time, and in support of the principle of progressive discipline, we find that the penalty of discharge for this offense is excessive. Mrs. Morris has not been an incorrigible employee, and her service as a switchboard operator has apparently been good. If she can be convinced of the importance of promptness in her job by the imposition of a substantial measure of discipline in the instant case, she should be able to provide further good service for the benefit of the Carrier and herself. Accordingly we find that she should be reinstated, with full seniority and vacation rights, but without back pay. The deprivation of back pay is intended as a penalty to impose upon the Claimant the seriousness of her responsibility for promptness on her job.

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

The discipline was too harsh and capriciously imposed.

A W A R D

The Claimant shall be reinstated with full seniority and vacation rights but without back pay.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1966.