

Award No. 15841
Docket No. TE-16625

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Atchison, Topeka and Santa Fe Railway, that:

1. Carrier violated the Agreement between the parties by imposing the severe, harsh and arbitrary discipline of dismissal from its service upon Printer Clerk Vivian Harley, effective May 30, 1965, alleged violation of Rules 19, 20 and 21, General Rules for the Guidance of Employees, 1959 Edition.

2. Carrier shall now reinstate Claimant Harley to her position in the Los Angeles Relay Office with seniority, vacation and all other rights unimpaired, expunge her personal record of the charges against her, and compensate Claimant for a day's pay each and every day held out of service, May 30, 1965, forward.

OPINION OF BOARD: *An analysis of the record in this grievance indicates that there is a single issue to be determined by this Board: Were there matters in extenuation which, if allowed and considered, would have mitigated the sanctions imposed.*

Claimant was charged with being twenty minutes late for work, being insubordinate, and falling asleep on the job.

At the hearing the Organization representative, in an effort to corroborate Claimant's testimony that she had taken a pill to relax her nerves and this caused her to fall asleep, attempted to read a letter from Claimant's doctor stating that he had changed her medication because it caused "drowsiness."

Carrier's representative at the hearing refused to consider the letter on the grounds that the doctor was not available for cross-examination.

Had such evidence been considered, it is clear that it would have been a factor mitigating the severity of the sanctions imposed.

Hearings of this nature should not and cannot be conducted within the restrictive limitations of the rules of evidence found in courts of law. This is so because the parties are not represented by lawyers, and, more importantly, such hearings are not adversary proceedings in the strictest sense.

Accordingly, the Board finds that under all the circumstances the sanctions imposed were too severe, and must be reduced.

Consistent with this finding there appears in this record a letter memorandum of a telephone conversation between the General Chairman of the Organization and the Assistant to the Vice President of Carrier setting forth Carrier's offer to reinstate Claimant if the money claim were withdrawn.

The Board recognizes such offer of compromise only for the purpose and only to the extent that it reflects the Board's finding as to what would constitute a reasonable sanction.

Claimant, therefore, should be reinstated to her position without back pay, but with seniority, vacation and other rights unimpaired.

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 Agreement was violated to the extent indicated in the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1967.