



Award No. 16073
Docket No. TE-16790

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Lines in Texas and Louisiana (T&NO), that:

1. Carrier's assessment of the penalty of dismissal of Mrs. M. T. Icet from its service effective August 6, 1966, on a charge of refusal to perform her duties and of being insubordinate while on duty as printer and teletype operator NH Office, Houston, Texas, July 28, 1966 is excessive and is an abuse of its discretion to assess discipline.

2. Carrier shall, for the reasons indicated above, restore Mrs. M. T. Icet to its service as printer-teletype operator HN Office, Houston, Texas with all rights unimpaired in accordance with the provisions of Rule 23 as amended.

OPINION OF BOARD: This is a discipline case.

The Claimant, Mrs. M. T. Icet, was a printer and teletype operator in the HN Office of the Carrier at Houston, Texas. She had been in the employ of the Carrier for approximately 21 years.

By letter dated July 28, 1966, the Claimant received the following communication:

"Thursday
Houston, Texas
July 28, 1966
114-I

Mrs. M. T. Icet:

You are charged with refusal to perform your duties and insubordination while on duty as printer and teletype operator in HN Office, July 28, 1966.

Hearing will be held in my office at 9:30 A.M., Wednesday, August 3, 1966.

Pending such hearing, you are suspended from the service.

/s/ W. L. Fagley"

The hearing was held as scheduled before Mr. R. E. Dipprey, Assistant Superintendent. The Claimant was present at the hearing and was represented by Mr. D. G. McCann, General Chairman, TCU.

Under date of August 5, 1966, Mr. Joe Foster, Jr., Assistant Superintendent of Communications, addressed a letter to the Claimant advising her that she was discharged from the service of the Carrier.

There is no claim that the Claimant did not receive a fair and impartial hearing.

An examination of the record discloses that the decision of the Carrier, finding the Claimant guilty of the charges, was in accordance with the evidence presented at the hearing. It might be stated in passing that the General Chairman, who represented the Claimant at the hearing, agrees with the decision of guilt. In his letter of August 25, 1966, addressed to the Manager of Personnel of the Carrier, he states, among other things, "Mrs. Icet deserved to be disciplined * * * I do not condone, but rather disapprove, of the employee's conduct toward her superior * * *." The letter does request that the punishment of dismissal is too severe, and that the Claimant be restored to service under certain conditions.

The only issue discussed on the property and the only issue before us is the request that the Carrier reconsider its decision that the Claimant be discharged and the request that the Claimant be returned to service "with seniority rights unimpaired without compensation for time lost."

This Board has held in numerous prior awards that our function in discipline cases is not to substitute our judgment for that of the Carrier or to decide the matter in accord with what we might or might not have done had it been ours to determine, but to pass upon the question whether, without weighing it, there is some substantial evidence in the record to sustain a finding of guilty. Once that question is decided in the affirmative, the penalty imposed for the violation is a matter which rests in the sound discretion of the Carrier, and we are not warranted in disturbing the penalty imposed unless we can say that it clearly appears from the record that the action of the Carrier with respect thereto was so unjust, unreasonable or arbitrary as to constitute an abuse of that discretion. See Award 5032.

There can be no question but that the dismissal from service is an extreme and severe penalty. Whether or not such a penalty is justified depends upon the many factors and circumstances in each case. In order to overrule, reverse and/or set aside the penalty, it is incumbent upon the Claimant to show that the Carrier in assessing the penalty was vindictive, arbitrary or malicious. In determining the guilt or innocence of an employee, the employee's past work record may not be considered in determining as to whether or not the employee is guilty of the charges brought against him or her. There can be no question but that the past record of the employee may and should be considered in assessing the penalty. See Award 12126.

We have carefully examined the record. That the Claimant was given and did have a fair trial is not denied. It is our opinion that the record discloses sufficient competent evidence to support the charges against the Claimant and that the Carrier was justified in so holding.

We also hold that the Carrier's action in imposing the penalty of dismissal was justified in view of the evidence presented, and in view of the Claimant's past record, which was none too favorable.

We will deny the claim.

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 is denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1968.