



Award Number 17515

Docket Number CL-18162

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6560) that:

- (a) The Southern Pacific Company violated the current Agreement between the parties when on June 12, 1968, it unjustly dismissed Mrs. Lee DeKoker from service following investigation held on June 5, 1968; and,
- (b) The Southern Pacific Company shall now be required to restore Mrs. Lee DeKoker to service with all rights unimpaired; to allow her one hour and twenty-five minutes compensation May 17, 1968, and eight hours compensation May 20, 1968, and each day thereafter until restored to service with all rights unimpaired; and,
- (c) For any month in which claim is here made for compensation in behalf of Mrs. DeKoker the Southern Pacific Company shall make premium payments in her behalf in appropriate amounts required under Travelers Group Policy Contract GA-23000 as amended, for all benefits prescribed in said contract.

OPINION OF BOARD: Claimant was notified by letter dated May 21, 1968 to report on May 24, 1968 for formal investigation to develop the facts in connection with: "your allegedly having conducted herself in a quarrelsome and uncivil manner in your relations with a fellow employe during your tour of duty on May 17; also, in connection with your alleged quarrelsome and insubordinate behavior when receiving instructions from Supervisors of the department on May 17." Claimant was specifically charged with violating Rules 801 and 802 of the Agreement.

Rule 801 provides in part:

"Employes who are insubordinate, . . . quarrelsome . . . will not be retained in the service."

Rule 802 provides in part:

". . . Civil . . . department is required of all employes in their dealings with . . . each other. Boisterous . . . or vulgar language is forbidden."

After hearing was held, Claimant was dismissed from the service of Carrier.

Claimant posits her defense to the charges involved herein on the failure of Carrier to comply with the provisions of Rule 47 of the Agreement, in that she was not given written notice of the "precise" charges against her so that she could properly prepare to defend against said charge; that the charges were not proven by Carrier; that the testimony given at the hearing did not justify the penalty.

In regard to the procedural defect, we do not agree with Claimant that the charge was not sufficiently "precise" so that she could properly prepare her defense. She was apprised of the date of the alleged occurrence and the fact that the names of her supervisors and a fellow employe were not given in said notice does not in our opinion create a fatal defect in said notice. At the hearing, the supervisors and fellow employe were identified and testified. Claimant, if she felt that the names of said persons caught her by surprise, could have requested a continuance if she so desired. In this instance, she did not. Therefore, we feel that her contention in regard to said alleged procedural defect is without merit.

In regard to the merits, the testimony adduced at the hearing showed that Claimant, in becoming concerned over when her supervisor would be leaving his office during working hours and where he was going, discussed this matter with her supervisor, Carrier's Special Representative, Mr. J. T. Bertram. Mr. Bertram, in regard to how Claimant would be notified as to when he was leaving his office and where he was going, testified:

"... I explained to Mrs. DeKoker that I would inform either Mr. Moore or Mr. Dale Smith, who would in turn notify her. Mrs. DeKoker stated, 'Then I am never to call you?' I said, 'Mrs. DeKoker, I did not say that. I said I would inform you when I was going to leave my office for an extended period of time.' Mrs. DeKoker then got up and said, 'No one around here knows what they are doing. You are all a bunch of jerks.' With that she left the office."

Carrier's Chief, Solicitation Bureau, W. H. Moore, testified that he was present in Mr. Bertram's office at the time Claimant made the above quoted remarks as testified to by Mr. Bertram, and verified said statement as made by Claimant.

Carol Lawton, Secretary, testified that on May 17, while sitting at her desk, Claimant accused her of hanging up on her on the phone, insulting her; that Claimant said she was rude, and while saying these things, Claimant was screaming and pounding Miss Lawton's desk. Miss Lawton also testified that Claimant called her a "bitch" and that Claimant was very argumentative and quarrelsome with her.

After carefully reviewing the testimony adduced at the hearing, it is our conclusion that Carrier sustained its burden of proving by probative evidence that Claimant was guilty as charged.

Taking into consideration the seriousness of the charges and Claimant's past record, we feel that Carrier was justified in dismissing Claimant from its service.

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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October 1969.