

Award No. 18363
Docket No. CL-18810

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYEES**

DETROIT AND MACKINAC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6831) that:

1. The Carrier violated the Clerk's Agreement by dismissing Mrs. Lucille Simons, said dismissal being arbitrary, unjust and an abuse of its discretion by inflicting this drastic and excessive penalty of dismissal, and
2. The Carrier shall clear her record, as the charge was not proven, of dismissal and she shall be restored to service with full seniority and all other rights restored, and
3. The Carrier shall be required to compensate Mrs. Lucille Simons for 4 hours pay, October 1, 1969, and one day's pay, \$28.43 (plus any subsequent increase) for each day lost beginning October 2, 1969, and continuous until such time as Clerk Simons is restored to service.

OPINION OF BOARD: The record discloses that on October 1, 1969, Claimant had been an employe of Carrier for approximately 6 years. That on that date, Carrier was defending, before a jury, a case for damages under the Federal Employes Liability Act arising from a fall on Carrier's stairs between the first and second floor of Carrier's office building in Tawas City, Michigan. The Trial Judge had ordered a view of the stairs by the jury. Carrier's Claim Agent had preceded the jury to the building to warn those employes in the building at that time of the impending visit by the jury and to warn them from saying anything in the presence of the jury. The Claim Agent did admonish Claimant and one other employe concerning the jury visit. Claimant then went to the rest-room which is situated about five feet above the first floor level off a landing. Claimant, while in the rest-room, mentioned something about the jury coming to look at the stairs and mentioned the fact that the Sheriff's car was in the parking lot. Upon leaving the rest-room, Claimant entered the stairway in controversy and made a statement to the effect that the stairway was treacherous; that you should watch those stairs; and that she (Claimant) had fallen down these stairs before; and that you had better hang on to the rails. Two of Carrier's employes heard the statement and

Claimant admits the same. There is also probative evidence contained in the record that at least one juror was in close proximity of Claimant at the time the statement was made. The trial resulted in a verdict for the plaintiff and against Carrier. The trial judge, upon a motion by Carrier for a new trial based upon jury tampering by this Claimant as above outlined, ordered a new trial unless plaintiff tendered a \$20,000.00 remittance. The trial judge also made a finding that the statement of Claimant was made in such a way that it could have been heard by the jury; that Claimant knew the jury was in the vicinity at the time; and that the jury, or some of them, heard the remark notwithstanding the fact that upon interrogation, none of the jurors would admit they heard the remark.

The Organization contends that Carrier violated the current Agreement because it failed to advise Claimant of the precise charge made against her and that the penalty of dismissal was unreasonable, arbitrary and unwarranted.

This Board finds that the Carrier acted within its rights to dismiss this Claimant from service. Carrier has every right to require their employees to act at all times for the best interests of Carrier. In this instance, Claimant knew, or should have known, that such a statement made in the presence of either the entire jury or one of the jurors, who could have repeated it to the other jurors, was prejudicial and contrary, not only to the best interests of Carrier, but contrary to the high principles with which a judicial proceeding should be carried out. It appears that this Claimant went out of her way to injure Carrier in its defense of a controversial liability case. Certainly, the Carrier could not have required or expected any of its employees to make statements favorable to the Carrier in the presence of a jury and certainly had a right to expect no unfavorable statements be made by employees. Therefore, this Board finds that the action of Carrier in dismissing this Claimant was justified; that such action was not arbitrary or capricious; and that this claim will be denied.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of December 1970.

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