

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19433
Docket Number CL-19675

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

(
(Southern Pacific Transportation Company (Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7068)
that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when on August 11, 1971 it arbitrarily and capriciously dismissed Inez M. Brumfield from service, and;

(b) The Southern Pacific Transportation Company shall now be required to reinstate Inez M. Brumfield to service with all Agreement rights unimpaired, to compensate her for six (6) hours and twenty (20) minutes May 5, 1971, and for eight hours May 6, 1971 and each date thereafter until she is restored to service with all Agreement rights unimpaired, and;

(c) For any month in which claim is here made for compensation on behalf of the Claimant involved, the Southern Pacific Transportation Company shall also make premium payments on behalf of the Claimant in the appropriate amounts required under Travelers Group Policy Contract GA-23000 as amended, for all benefits prescribed in that contract.

OPINION OF BOARD: This claim arose from the allegation that Claimant, Mrs. Inez M. Brumfield, and Mrs. N. B. Gunter entered into an altercation during regular duty hours on May 5, 1971, in Carrier's premises at 153 Market Street, San Francisco, California. After hearing, both employees were dismissed. Subsequently, Mrs. Gunter was reinstated to service without compensation for lost time; Mrs. Brumfield was not reinstated. Petitioner seeks reinstatement of Mrs. Brumfield on the ground that Carrier's refusing her reinstatement, while reinstating the other employee, amounted to "an abuse of its judicial discretion".

At the time of the alleged altercation Mrs. Brumfield had one and one-half years (1½) of service with Carrier. Mrs. Gunter had twenty-five (25) years of service.

Both employees attended a May 13, 1971 formal investigation on the subject of whether there had been a violation of Rule 801 of the General Rules and Regulations of the Southern Pacific Transportation Company. In pertinent part, Rule 801 provides that:

"Employees will not be retained in service who are quarrelsome and otherwise vicious; courteous deportment is required of all employees in their dealings with each other. Boisterous, profane or vulgar language is forbidden; employees must not enter into altercations, scuffle or wrestle while on duty."

A number of individuals who were in the immediate and general area of the altercation testified at the May 13, 1971 hearing. However, the two employees themselves gave the most revelatory testimony; in pertinent part, this testimony now follows:

TESTIMONY OF MRS. N. B. GUNTER (AAR CLERK)

"I was sitting at my desk. I had already started to work, and Mrs. Brumfield, Inez, was coming down the hall and she was making some remark about the crazy, stupid people, they are all nosy and stupid. And just before that -- first of all, the rest room door -- there was some commotion going on in the rest room. They pushed the rest room door open. They had one of the desk chairs pulled in there, and somebody said they were washing it down. They didn't want to sit in it. Just before that I made the remark that the next thing you know they will be pulling the desk in and washing it. And then in a few minutes Inez came down the hall and made this other remark I told you. She went to the rest room and I had a minute or so -- two minutes -- she came out and walked up to my desk and said -- who is Nora? And I said -- I am, why? And she stated -- well, I would like to tell you to your face that you are stupid and crazy and you are a bitch. And I answered to her -- I was still sitting at my desk -- if anyone here is crazy, you are or you wouldn't be acting like you are -- and then she lunged into me and started scratching at me and pulling my hair. I was upset and this Mr. -- somebody started -- I was standing in the middle of the office. I was sitting in Mr. Jordan's office crying with my hands over my face and she started attacking me again. I -- I started bleeding and -- I don't know -- Nadine helped pull her off me and Diane Watkins was there -- and I did think Diane pulled my hair -- and Mr. Hayes or Mr. Jordan said -- Nora, she didn't, she was trying to help you. I said I was sorry I accused you, Diane. If I did, I am sorry, and they took me to the emergency to stop the bleeding. And also I have my jacket and my dress that she tore completely off of me.

* * * * *

Let the records show that Mrs. Gunter made available a brown woman's jacket that was torn, alleging that Mrs. Brumfield tore this during the altercation."

TESTIMONY OF MRS. INEZ M. BRUMFIELD (FILE CLERK)

"First, I had been upset earlier about something that I had happened earlier, which is irrelevant to this. I was walking to the rest room, Diane was in front of me, Renee was in back of me, but was sitting down. Renee asked me, said -- hey, what's happening? I said nothing but this insane asylum with all the crazy people, the same thing. I went to walk off to the rest room, Nora says -- if anyone's crazy around here, it's you. Am going to walk through the motions. Nora said if there is anyone crazy, it's you. I walked up to Nora and leaned over to her face (Mrs. Brumfield leans over and looks into Mr. Matthew's face) and told her -- you're crazy. She called me stupid. I started walking up on her and she was sitting on her seat saying -- oh, get away from me. She started to yell and throw her hands, screaming -- get away, get away from me -- like I am really nasty or something. OK, the way -- I might -- must have been fighting her because that is when she struck me. She struck me with her left, I don't have to lie about it there, and we were fighting. That is all I needed because she made me mad because-by this get away from me. If she had been working like she said she was working so, she wouldn't have had time to make a comment like that. OK, after that we were fighting, right? I am not going to let you or anyone else hit me and not do anything about it. We were fighting and they were -- she had the top of my hair. They broke us up and I just -- just accepted that she had really hit me, so I went back into Jordan's office and jumped on her again. OK, they stopped us from fighting. This is the second time -- this is when Jack Perry pulled -- pushed me on my shoulders and told me that I was out of line. That was all. They took Nora to the doctor and I go over to the doctor's office. They made me go, there was nothing wrong with me except I had a pain right here in my right shoulder. I go into the doctor's office, Nora stretched out on the bed like she was half dead. The doctor tells me I have to wait till 10:30. It was just 9:30 then. That is all there is, there is nothing more to it. She provoked me, and it doesn't make any difference to me."

On May 19, 1971, on the basis of the above and other testimony of record, the Carrier dismissed Mrs. Brumfield, Claimant herein, and Mrs. Gunter. The grounds of dismissal were that evidence adduced at the hearing of May 13, 1971 established responsibility for entering into the altercation and that the actions of each employee constituted a violation of Rule 801 of the Carrier's General Rules.

Later, on August 9, 1971, the Carrier reinstated Mrs. Gunter with seniority unimpaired, but without compensation for time lost. The Carrier declined to act favorably on the claim for reinstatement submitted in behalf of Mrs. Brumfield.

The essence of Petitioner's previously noted contention is that because the Carrier reinstated Mrs. Gunter without reinstating Mrs. Brumfield, the Carrier assessed discipline against Mrs. Brumfield in such a discriminatory manner as to amount to an abuse of discretion. This position is not supported by the record before the Board.

Indeed, the record shows there was substantial evidence to support the Carrier's finding that the Claimant violated the rule under which she was charged. Having so found, the Board will not disturb the penalty assessed against Claimant unless we find the Carrier's decision on the penalty was so unjust, unreasonable, arbitrary, capricious, or discriminatory as to amount to an abuse of discretion. After a thorough review of the record before us, the Board finds no reason to so conclude or to find that the penalty respecting the Claimant was inappropriate. The fact that one employee was reinstated, and that Claimant was not, does not warrant a finding of discriminatory action by the Carrier in the case before us. Once the Board has decided, as in this case, that the discipline assessed by Carrier is supported by substantial record evidence, and is otherwise proper, the Board has concluded its function. For the Board to go further would place it in the incongruous position of giving consideration to the modification of a penalty which it has found to be proper under prior decisions and applicable criteria. To state the proposition is to dismiss it. On the record as a whole, therefore, it cannot be said that the Carrier acted in an unreasonable, arbitrary, capricious, or discriminatory manner in assessing the penalty of dismissal against Claimant.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1972.