

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21068
Docket Number CL-21159

Joseph A. Sickles, Referee

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

PARTIES TO DISPUTE: (

(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-7861**) that:

1. Carrier violated the Working Agreement with **an** effective date of March 3, 1970 between the parties hereto, when on the seventh day of February, 1974, it suspended Ms. Jacqueline **Haynes**, PBX Telephone Exchange Operator, PBX **Extra** List, Chicago Regional Office Building, Chicago, Illinois.

2. Carrier violated the **Agreement** between **the** parties hereto when on March 10, 1974, it discharged Ms. Jacqueline **Haynes**.

3. Carrier **shall** restore Ms. **Jacqueline Haynes** to service with seniority **rights unimpaired**, showing exoneration, including her right to return to her **former status as an Extra List Employee**, and be reimbursed for **any** and all loss of **compensation** incurred, including **any** loss suffered by her and her dependents as a result of the effect of her dismissal upon Group Policy Contract GA-23000 at the present time or in the future.

OPINION OF BOARD: On February 6, 1974, Claimant **Haynes** and Ms. Jasos engaged **in** a verbal dispute. **When** ordered to leave the telephone room by the Chief Telephone Operator, **Haynes** and Jasos continued their dispute, outside of the building, and a physical altercation ensued. On **the** following day, Claimant was notified to attend an investigation on a charge of conduct unbecoming an **employee, and absenting** herself from her telephone exchange operator duties.

Subsequent to investigation, Claimant was discharged from service.

Claimant asserts **that dismissal was not justified, and** her investigation was not conducted in **a fair and impartial manner.**

The **record shows that certain of the employees in the telephone room** were **engaged in a discussion**, on the date in question, **as to the procedures for "taking breaks."** The discussion erupted into **a loud yelling** confrontation between Claimant and Jasos, to the point that the Chief Operator told both participants to leave the **room so that the other operators could continue to perform their duties.** After some delay, during which the heated conversation continued, **the two employees went** outside of the building and **continued the disagreement, which resulted in a physical confrontation (including liberal use of**

"vulgar" epithets) and it became necessary that other individuals physically restrained the **combatants** from continuing the "brawl."

Jasos concedes that there **was** a loud verbal confrontation and that she suggested that she and Claimant "go outside" to settle the matter. Moreover, she stated that **once** outside, she suggested that they step **around** to a nearby alley, rather than continue the matter in front of the building and **"make a big scene."** She denies that it was ever her intention to invoke, or engage in, a physical battle, but that Claimant jumped her from behind, at which **time** she had no alternative but to defend herself.

Claimant states that she did **not engage** in a verbal dispute with **Jasos** on the day **in** question, other **than** to tell her to "go to Hell" in a moderate voice. Moreover, she had no idea as to why **Jasos** suggested that they leave the building **in order** to settle differences. She has **no** recollection of the Chief Operator **asking** her to leave the room, but she did depart **when** **Jasos** said she **was** going to **"...knock the hell out of me"**, to which she replied, "O.K., let's do it."

Claimant seems **to concede** that she made the first physical contact when she "grabbed" **Jasos** by the **shoulders**, but she does not recall why she grabbed **her**. She also concedes that she kicked at **Jasos** **after** the two were separated.

One witness indicated **that** both participants employed profanity, and they both indicated that a physical altercation **was** in the offing when they departed the **telephone** room.

We have considered **Claimant's insistence** that Carrier has violated her rights in the **handling** of this matter. She states that the charges were misleading and did not **properly** appraise her of the **nature** of the **accusations** against her. The charge spoke **in terms** of conduct **unbecoming** an **employee**, but at the investigation - and in **subsequent** steps - Carrier placed certain **reliances upon** specific rules. But, as we read those rules, they are directly related to **employee conduct**. Clearly, the record fails to disclose that Claimant **was misled** - and thereby precluded from **formulating** her defense - or that her rights were, in any **manner**, prejudiced.

We have also **considered** the fact that the individual who served as accuser and as a witness **also** participated in the early stages of the appellate procedure. We **freely** concede that such a **procedure** could, under a given set of **circumstances**, operate to the **substantial** prejudice of a Claimant. However, based upon this record, and the admissions of guilt contained therein, any suggestion of prejudicial **error** would be highly conjectural.

Finally, we consider the **merits** of the dispute. It is suggested that Carrier has failed to satisfy the burden of proving **which participant was** the **motivating** factor in the events which resulted in the physical altercation, and

accordingly, the disciplinary action should be set aside. Without unduly burdening this document with a lengthy recitation of the pertinent evidence of record, we are inclined to find that the actions of both **employees** showed a willingness to engage in rather severe misconduct which was clearly contrary to the best interests of their employer. In every instance such as the **one** here under review, it is safe to **say** that one of the parties ignited the spark. But, it is equally safe to state that both parties had **ample** opportunity to restore a sense of propriety to the matter before it **became** totally uncontrollable.

This record leaves no doubt that both Claimant and **Jasos** were committed to settle their differences in a physical **manner when** they left the telephone room. Moreover, we feel that the record contains sufficient evidence, including **Claimant's** own testimony, to substantiate guilt. The **quantum** of discipline **was** not excessive.

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 Employer 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:


Executive Secretary

Dated at Chicago, **Illinois**, this 29th day of April 1976.