

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21984
Docket Number CL-21895

Herbert L. Marx, Jr., 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-8276, that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it unconscionably and **without** justification dismissed Mrs. Donna **Ramsey** from **service** following investigation; and,

(b) The Southern Pacific Transportation Company shall now be required to restore Mrs. D- Ramsey to service with all her rights unimpaired; to reimburse her for all expenses incurred **which** would **have** otherwise been borne by the Carrier if she had not been dismissed **from** its **service**, and to compensate her for all wages, **hospitalization**, Travelers Insurance Company loss, Aetna Life and Casualty loss, **in** each instance and each date **commencing** January 17, 1976, **until** she is restored to service.

OPINION OF BOARD: Claimant was dismissed from service on February 12, 1976, following a hearing, for violation of portions of Rule 801 of the Carrier's **General Rules** and Regulations, reading as follows:

"**Employees** will not be retained in the service **who** are . . . quarrelsome or otherwise vicious . . .

Courteous deportment is required of all **employees** **in** their dealings with . . . each other. Boisterous, profane or vulgar language is forbidden . . ."

The Organization, at the outset, argues that the **claim** should be allowed **on** procedural grounds alone, in that the Carrier's Superintendent denied the claim prior to conference and thereafter did not sufficiently explain his reasons for **denial** following conference.

The Board does not find these allegations to be **sufficiently** substantial to affect the progress of the claim. Conference **was held**, **an required**, and there is no doubt as to the basis of the Carrier's decision.

The Board finds that the hearing showed clearly **that** the Claimant **was** guilty of conduct contrary to the cited portions of **Rule 801**. The Claimant herself admitted most of the **transgressions** of which she **was** accused. **The** Board finds, h-et, that the disciplinary action **taken was** excessively severe in relation to the specific actions taken by the Claimant.

In **connection** with her improper and profane **language** to a Carrier official, the Claimant nevertheless was not **found** to be in-subordinate in the sense of failing to perform her duties as ordered. While the **language is** unacceptable, it **was** not used to her direct superior but in a heated conversation with another carrier official. The **exchange was** limited to words, **with** no violence or **threat** of violence involved.

On a number of previous occasions, the Carrier had **found** it necessary to warn the Claimant as to her failure to meet the **standards** expected of an **employee**, but in **none** of these instances **was any formal** discipline imposed. **On** the first imposition of discipline for a behavioral offense, a more moderate penalty is appropriate. This is in **keeping with** the principle of **using** discipline as a corrective measure -- a procedure applicable except **when the offense is** of the most serious nature.

The Board finds the dismissal too severe and **will modify it** to a penalty of 60 **calendar days'** suspension. For the period during which the Claimant has been out of the Carrier's service beyond the initial 60 days, the Board will sustain the Organization's claim as to **reinstatement** and payment for net **wage** loss, as provided in **Rule 52**. The reminder of the Organization's **claim** is 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 Employee **involved** in this dispute are respectively Carrier and **Employee within** the meaning of the **Railway Labor Act**, as **approved** June 21, 1954;

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That this Division of the Adjustment Board **has** jurisdiction **over** the dispute involved herein; and

That the **Agreement** was violated to the **extent shown** in **Opinion.**

A W A R D

Claim sustained to the extent indicated in the Opinion and **Findings.**

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this **31st** day of **March 1978.**