

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22596

Docket Number CL-22524

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(
(Union Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8604) that:

1. The Carrier violated the currently controlling and effective Agreement between the parties to this dispute when on July 26, 1977, the Superintendent imposed the **extreme** penalty of dismissal on the person of Assistant Chief Clerk **Alexa A. Woods**.

2. The Carrier violated **the** currently controlling and effective Agreement between the parties to this dispute when during the investigation held on July 19, 1977, the Superintendent of Northern Terminals, Mr. F. **Bealer**, informed Claimant she was being withheld from service pending results of the investigation.

3. Effective March 2, 1978, Carrier returned Claimant to service without prejudice to the claim of the Brotherhood. Claim is thus for all compensation lost beginning July 19, 1977 and continuing until the date she actually returned to service, or March 2, 1978.

OPINION OF BOARD: An investigative hearing was held on July 19, 1977 to determine whether claimant was insubordinate when she allegedly refused to follow her supervisor's instructions to handle paychecks on the night of July 14, 1977 in apparent violation of General **Rules A & B, Rules 700, 701, 702 and 702(B)** of Rules Governing Duties and Department of **Employees**, Safety Instructions and Use of Radio, Form 7908 effective October 1, 1974.

Claimant was subsequently found guilty of **the** asserted charges and dismissed from service on July 26, 1977. This disposition **was** then appealed on the property pursuant to Agreement **Rule 45** and at a proposed settlement conference held in Salt lake City, Utah on January 23, 1978, Carrier noted its **amenability** to restoring claimant to her position but without back pay for **time** lost.

Predicated upon this understanding claimant was returned to service with the **back pay portion of the claim** still **remaining unresolved**. **This** issue is **presently** before us.

In our review of the case, we agree with claimant that Carrier technically, albeit **nonwilfully** violated Rule 45(a) when it didn't observe properly the explicit requirements regarding appropriate suspension notice pending a hearing which shall be held in seven **(7)** days. Waiting until the hearing to apprise her officially that she was suspended didn't cure this oversight.

On the other hand, we **agree** with Carrier, that the record clearly supports the charges that claimant was insubordinate when she refused to take responsibility for handing out paychecks on July 14, 1977.

The pattern of events and the specific deployment and availability of supportive clerical pers-1 did not create an untenable situation **that** warranted her action.

Under the specific circumstances of that incident, claimant was duty bound to obey diligently Carrier's supervisory directives. Her **refusal was** plainly impermissible.

In Public Law Board 117, Award 3, a nationally distinguished railroad arbitrator cogently articulated a principle that succinctly **expresses** the obey now, grieve later rule. **He** stated:

"Unless the instructions given the claimant by Carrier supervisors put him in **imminent** danger of life or limb, or were clearly and manifestly violative of public morals and law, the **claimant** was contractually obligated by virtue of the **employer-employee** relationship to comply with Carrier instructions."

We believe **this** principle is directly on point with the fact specifics herein given the absence of these definable exceptions.

Accordingly, **inasmuch** as we find claimant guilty of the charges of insubordination we feel that the de facto penalty of suspension without back pay should not have exceeded three (3) months

when measured against the pertinent **background** circumstances vis her reinstatement **and** her past employment record. We will, thus, order that she be paid back pay for all time lost subsequent to October 26, 1977 and the week she was improperly suspended, July 19, 1977 through July 26, 1977.

FINDINGS: The Third Division of the **Adjustment** Board, after giving the parties to this dispute due notice of hearing thereon, **and** upon the whole record **and** all the evidence, finds **and** holds:

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 violated to the extent expressed **in** the Opinion.

A W A R D

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this **30th day** of October **1979**.