

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 22814
Docket Number CL22853

Paul C. Carter, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
PARTIES TO DISPUTE: (
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (**GL-8796**)
that:

(1) Carrier violated the Rules of the current Agreement between the parties (DP-451) including but not limited to Rules 26 and 3.5 (**b**) when it dismissed Mr. S. L. Thies, Chief Clerk-Grain Position, Marketing Department, **St. Louis, Mo.**, from its service effective 5:00 p.m., February 14, 1978.

(2) Carrier shall reinstate Mr. S. L. Thies to **its** service with his seniority, vacation, insurance and all other **employee** rights restored, unimpaired and clear his personal records of these charges and shall compensate him for all time lost, including overtime he could have worked in line with his seniority and allow interest on all monies due.

OPINION OF BOARD: Claimant was the occupant of Chief Clerk-Grain Position, Marketing Department, St. Louis, Missouri, with assigned hours **8:15** A.M. to 5:00 P.M., forty-five minute meal period, Monday through Friday.

By letter dated February 14, 1978, he was advised that he was dismissed from the service of the Carrier. The letter of dismissal read:

"Mr. **J. A. Beekman**, Chief Clerk, General Freight Office, **St. Louis, Mo.**, informed **me** he contacted you in the General Freight Office on February 13, 1978, at **approximately 9:30** A.M., while you were discussing non-railroad topics with **Mr. George Hix**, Assistant Correspondence Clerk, and requested you to stop talking, at which point you turned to Mr. **Beekman** and said, 'Boy, there is something wrong with you. I don't **understand** why you are so afraid of Tom **Steiniger**,' and returned to your desk, shaking your head in a manner suggesting disgust, and further stating in a loud voice, 'Quit staring at **me** so **much**.' Mr. **Beekman** then told you, 'If you were working all the time I wouldn't have to stare at you.'

"The statement **made** by you was repeated three times following the first statement and in each case Mr. **Beekman informed** you that had you been working, no cause would have arisen for the staring.

At **the time** the statements were made by you, there were present in the office other clerks and also Mr. H. A. Woodbury, **Rate** Manager, Marketing Department.

This incident is in direct violation of Circular No. DP-2, Missouri-Kansas-Texas Railroad Company General Rules Governing Conduct of Employees in all Departments and Company Policy on Assessment of Discipline (Reissued January 1, **1975**), Paragraphs --

- A. 'Employees **must ***** devote themselves exclusively to their duties *******.'
- C. 'Courteous deportment is required of all **employees** in their dealings with ******* their superiors ******* and each other.'
- D. 'Employees must not be:
 - (3) Insubordinate.
 - (6) Quarrelsome or otherwise vicious.'

This is not the first time you have been cited for improper conduct and other violations of company rules. For your ready reference, I attach copies of letters dated December 3, 1976 citing an incident of physical attack upon a **co-worker**, for which you were suspended for a period of ten working days; May 13, 1976 citing you for action contrary to good discipline pertaining to remarks **made** by you to a **company** official; and a note from you dated August 5, 1974 protesting a diversion from your then present position as Chief **Clerk-WTL**, General Freight Office, to assume duties of the Southwestern Lines Pate and Route Check position at the Southwestern Freight Bureau.

For your violation of **rules** as cited above and because of your previous disciplinary record, you are hereby dismissed from the service of the Missouri-Kansas-Texas Railroad as of 5:00 P.M. today, February 14, 1978.

Please acknowledge receipt on enclosed copy of this letter."

In accordance with the provisions of the applicable Agreement, claimant requested an investigation, which was scheduled for March 9, 1978, **and** postponed to March 21, 1978. A copy of the transcript of the investigation has been made a part of the record.

The Board agrees with the contention of the Organization that **the** matter of claimant protesting the diversion from his position to another position in 1974 was not a matter subject to discipline and was improperly referred to in the letter of dismissal. However, we do not consider this of sufficient significance to void the entire proceedings.

In disciplinary proceedings the burden of proof is on the Carrier to support the charge against the **employee**. In the investigation conducted on March 21, 1978, the Chief Clerk of the **General** Freight Office, Mr. **Beekman** testified along the lines outlined in the letter of dismissal. In the claimant's **testimony** he **acknowledged** that the **Chief** Clerk instructed him to return to his desk while he was conversing with another clerk, and after returning to his desk there was an exchange of words with the Chief Clerk. Another witness testified that the exchange of words between the claimant and the Chief Clerk **was** above **the normal** tone of conversation.

Based upon the entire record before it, the Board concludes that discipline was warranted. However, in **our** opinion permanent dismissal was **overly** severe. We will award that **claimant** be restored to **the** service with seniority and other rights unimpaired, but without any compensation for **time** lost while out of Carrier's service.

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 discipline imposed was excessive.

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1980.

