

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22934  
Docket Number CL-23091

Paul C. Carter, Referee

(Brotherhood of **Railway, Airline and Steamship Clerks,**  
**( Freight Handlers, Express and Station Employees**  
**PARTIES TO DISPUTE: (**  
(Chicago and Worth Western Transportation Company

**STATEMENT OF CLAIM:** Claim of the System **Committee** of the **Brotherhood (GL-8921)**  
that:

1. Carrier violated the agreement rules, particularly Rule 21, when under date of October 20, 1978 it issued two (2) notices wherein it **dismissed** Ms. Lee Names from service of the Carrier account of two (2) investigations held **on** October 16, 1978.

2. Carrier shall **now be** required to reinstate Ms. Lee **Names** with all rights unimpaired, and **make** her whole for all losses from October 20, 1978 **forward**, including any monies expended which would have been covered **under** Travelers Group Policy GA-23000 and Aetna Group Policy **GP-12000**.

**OPINION OF BOARD:** **Claimant** had been in Carrier's service about **nineteen** and one-half years. She was employed as a steno-clerk in Carrier's Real Estate and Industrial **Development Department**. The record shows that **on** October 9, 1978, claimant entered **the** office of her **immediate supervisor, Mr. Kennerly**, and complained that he had **given her** "over-load" work from another steno-clerk. It appears that a rather heated discussion developed, with Mr. **Kennerly** asking **claimant** twice to do the work, and **claimant** stating that **Mr. Kennerly was** not her **supervisor and** leaving the office.

Following the incident in Mr. **Kennerly's** office, **claimant** was instructed to report to the office of the Assistant Vice Resident - Real Estate, Mr. **R. w. Mickey**. Claimant refused to report to **Mr. Mickey's** office without her union representative present. She subsequently **met** with Masers. **Kennerly and Mickey**, in the **company** of the **Division Chairman**. The Carrier states that the purpose of the meeting was to clarify **the fact that Mr. Kennerly** was claimant's direct supervisor.

**On** October 9, 1978, **claimant** was notified to attend a **formal** investigation on the following charge:

"Your responsibility for insubordination when on October 9, 1978, you:

- (1) Refused to obey **an** order from **Mr. Kennerley**, Manager of Title and Closing, at or about 9:00 A.M. on that date to perform certain typing work;
- (2) Refused to obey an order from Mr. Mickey, **Assistant Vice President-Real Estate and Industrial Development**, at or about 10:00 A.M. on that date to report to his office immediately for the purpose of securing facts and your version of **Mr. Kennerley's** instructions to perform such typing work;
- (3) Refused to obey an order **from** Mr. Mickey at or about **10:10** A.M. on that date to again report to his office for the purpose of securing facts in connection with your declining to perform such typing work."

Hearing on the above charge was conducted on October 16, 1978, following which **claimant** was dismissed from the service.

On October 9, 1978, the Assistant Vice **President-Real Estate**, upon the **recommendation** of Dr. William B. Clark, Assistant Vice **President-Personnel Development** (who holds a Ph. D. in psychology and is a registered psychologist in the State of Illinois), instructed claimant to report to the office of Dr. **Arieff** at 3:00 P.M., on October 12, 1978, for a psychiatric evaluation, arrangements having been made for the **appointment**. Claimant **responded** that she considered the request improper and requested that the appointment with the doctor be **cancelled**. On October 11, 1978, claimant was again instructed by the Assistant Vice Resident-Reel Estate, in writing, to report for the examination, as previously instructed. **Claimant** did not report for the **examination as instructed**, and was subsequently directed to report for a f-1 investigation **on** the following charge:

"Your responsibility for your failure to report for medical **examination on** October 12, 1978, as instructed by letters from Mr. Mickey dated October 9 and October 11, 1978."

A hearing on this charge was held on October 16, **1978**, following which claimant was notified of her dismissal from the service.

The **Board** has carefully reviewed the transcript of each investigation, and we are compelled to the conclusion that there **was** substantial evidence in support of the charges in each case. **It** was the claimant's obligation to **comply** with the **instructions** of her superior officers **in** each case. If she considered that her Agreement rights were being violated or **that** she was being mistreated, her recourse was to comply with the instructions **and** then **handle** through the grievance procedure. Her actions in each case were, to say the least, ill-advised.

While disciplinary action was warranted, the **Board** is of the opinion, under all the **circumstances** and considering claimant's length of service, that **permanent** dismissal was excessive. We will **award that** claimant be restored to service with seniority and other rights **unimpaired**, but without any compensation for time lost while out of service, provided that she satisfactorily passes examinations, physical or psychiatric, that may **be** required by the Carrier.

**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.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1980.