

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23025
Docket Number CL23063

Paul C. carter, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
PARTIES TO DISPUTE: (
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8910) that:

1) The Company violated the Agreement when it used unjust and too severe punishment against Ms. Parr and dismissed her **from** the service of the Company.

2) The Company shall now be required to reinstate Ms. Parr in her former position without loss of seniority and with full pay for all days lost.

OPINION OF BOARD: It seems clear from the record that on September 5, 1978, **claimant** was scheduled to work the **7:00** A.M., janitor's position. She did not report at the starting time of the assignment. Another clerk was called to work the position.

On September 6, 1978, claimant was called into the office of her supervisor to sign for thirty demerits. **Immediately** after she signed for the demerits, claimant was told **that** she could either resign or a formal investigation would be held. **Formal investigation** was held on September 13, 1978, on the following:

"...to determine facts **and** place responsibility, if any, in connection with **your** habitual failure to report for duty at the prescribed time and place **and** absenting yourself from duty without proper authority, the most recent case being your alleged failure to report for duty as Janitor at 7:00 A.M., September 5, 1978, and absenting yourself from duty without proper authority on that date."

On September 21, 1978, claimant **was** notified:

"**As** a result of Formal Investigation held in Conference Room, Utility Building, Grand Junction, Colorado, at 10:00 A.M., September 13, 1978, to determine facts and place responsibility, if any, in connection with your habitual failure to report for duty at the prescribed time and place **and** absenting yourself from duty without proper authority, the most recent case being your alleged failure to report for duty as Janitor at 7:00 A.M., September 5, 1978, and absenting yourself from duty without proper authority on that date, effective this date your personal record is being assessed with Thirty Demerits for your responsibility therewith.

"The assessment of this discipline gives you **an accumulation** of 100 demerits standing against your record and you are, therefore, dismissed from the service on this account."

In its submission to this Board, the Carrier states:

"The Organization is well aware that the dismissal account the **accumulation** of **ninety** (90) or more demerits will cause discharge from the service under the discipline by record System in effect on this property was not discipline assessed account the investigation or charge. Instead, the dismissal was required when ninety or more demerits were accumulated on Ms. Parr's record."

It is the view of this Board **that** the **manner** in which the demerit issue was handled on September 6, 1978, as brought **out** in the **investigation**, leaves much to be desired. In Award 20937 this Board held:

"Basic fairness **and** justice requires Carrier to advise an employee who waives investigation and accepts discipline, when the waiver and acceptance will give **him** a total number of demerits over the **maximum** permitted by the Brown System, that by so doing he is thereby assenting to dismissal. The notice must be clear and specific."

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See also Second Division Award No. 6922.

X-2 The record does not show that **claimant** was given any notice **whatso-**
ever prior to signing for the thirty demerits on September 6, 1978.

The record does show, however, that claimant's prior work record was less than satisfactory, and there is no question that she failed to protect her assignment on September 5, 1978. Discipline was warranted, but, under the facts of record, we consider permanent dismissal 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.

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.

RATIONAL RAILROAD **ADJUSTMENT BOARD**
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.