

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23933
Docket Number CL-23874

Josef P. Sirefman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Xpress and Station Employees
(Fruit Growers Express Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9337) that:

(a) The Fruit Growers Express Company violated Rule 50, among others of the agreement when it unjustly and arbitrarily assessed discipline of dismissal on Claimant Marilyn Brown effective November 9, 1978.

(b) The Company shall now be required to reinstate Claimant Marilyn Brown with all seniority rights unimpaired and make whole for all lost wages.

OPINION OF BOARD: Claimant Marilyn L. Brown was hired by Carrier on May 5, 1978 as a VariType-Operator-Secretary. On November 27, 1978 she was charged with five separate instances of insubordination to her supervisor, ranging from October 4, 1978 through November 9, 1978. A hearing was held on December 6, 1978 and Claimant was informed of her dismissal on December 15, 1978.

Examination of the record before this Board establishes that Claimant was a fine employee when she first started working for Carrier until, perhaps due to the pressures of an illness or on the job, she became difficult for her supervisor to work with. There was substantial evidence in the record to sustain the Carrier's decision to discipline Claimant. However, given the circumstances the penalty of dismissal is too severe. Accordingly it is our determination that Claimant is to be restored to service with seniority rights unimpaired but without back pay for the time spent out of service. Claimant is admonished that she is being given an opportunity to once again be that fine employee she can be, and is advised to seize upon this opportunity.

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;

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

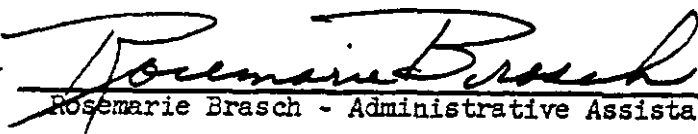
That the discipline **was excessive.**

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting ~~Executive~~ Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **30th** day of **June 1982.**

