

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25027
Docket Number CL-25034

Eckehard Muessiq, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employes**

PARTIES TO DISPUTE: (

(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9764)
that:

(a) The Carrier violated the Rules Agreement, effective December 1, 1949, reprinted January, 1958, to include amendment and agreement subsequent to December 1, 1949, when it assessed discipline of dismissal on Clerk Deborah Dixon **Fansler** on February 24, 1981.

(b) Claimant **Fansler's** record be cleared of the charges brought against her on January 22, 1981. (IHB Docket CLK-264).

(c) Violation of Rules 15, 28 and others, whereas D. Dixon's (Mrs. Fansler) discipline rendered February 24, 1981 was unfair and unduly excessive creating an exorbitant amount of overtime on the Carrier's behalf, in addition to a series of time claims that will follow each and every time Mrs. Fansler is deprived of her unionized right to work. (Dates claimed are April 26, May 3, 5, 9, 10, 10, 11, 12, 13, 15, 16, 22, 23, 26, June 6, 7, 13, 14, 14, 14, 1981 at \$82.227 each date.) (IHB Docket CLK-284).

(d) Violation of Rules 15, 28 and others whereas D. Dixon's (Mrs. Fansler) discipline rendered February 24, 1981 was unfair and unduly excessive creating an exorbitant amount of overtime on the Carrier's behalf in addition to a series of time claims that will follow each and every time Mrs. Fansler is deprived of her unionized right to work. (Dates claimed are July 3, 4, 5, 1981, \$82.227 per day.) (IHB Docket CLK-285).

(e) Violation of Rules 15, 28 and others: whereas D. Dixon's (Mrs. Fansler) discipline rendered on February 24, 1981 was unfair and unduly excessive thus creating **deprivation** of the claimant's right of job opportunity and assignment. Mrs. Fansler (D. Dixon) is qualified, available and willing to protect job assignments as past practice has revealed. Date claimed continuous commencing with September 2, 1981. Rate of pay \$80.723 per day. (IHB Docket CLK-291).

/OPINION OF BOARD: This dispute involves four (4) separate claims on behalf of the Claimant herein. The incident giving rise to the primary claim came about as a result of the Carrier's contention that the Claimant had failed to comply with instructions issued by her Supervisor. Following an investigation, the Claimant was dismissed from Carrier's service. The remaining three claims were filed subsequent to the Claimant's dismissal.

After reviewing the lengthy record in this dispute, the Board finds substantial evidence to support the Carrier's finding. Although the Board has held many times that dismissal is not inappropriate, in certain instances when an **employee** fails to comply with legitimate instructions, we consider permanent dismissal to be excessive discipline. This finding is based on certain mitigating facts and circumstances in the record before us.

Having thus found, the claimant shall be restored to service with seniority 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

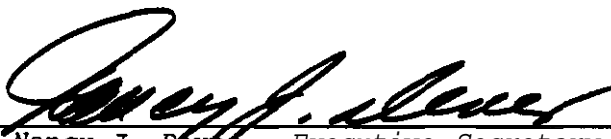
That the discipline **was** excessive

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1984.

