

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25473
Docket Number CL-25122

Eckehard Muessiq, Referee

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

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (**GL-9730**)
that:

1. **Carrier** violated the terms of the current Agreement, particularly Rule 21, when it dismissed from service Clerical **employee** Lee Names on the basis of an investigation held on November 10, 1981, and when it failed to timely render its decisions, and;

2. Carrier shall be required to reinstate Clerical **employee** Lee Names with all rights unimpaired and compensate her for all losses suffered commencing **November** 17, 1981, and continuing until the violation is **corrected**, including all fringe benefits which would have occurred to her employment during the period had she not been dismissed.

OPINION OF BOARD: Subsequent to an investigation, the Claimant was dismissed from the Carrier's service on the basis of a finding of guilt to charges of insubordination and failure to protect her assignment.

The Organization argues on both procedural and substantive grounds. On the former, there is no dispute that the Carrier failed to make a timely reply to the Organization's initial letter of appeal. Specifically, it failed to comply with the provisions of Rule 35(a) when it did not respond until March 24, 1982, to the Organization's claim of January 13, 1982, eleven days beyond the 60-day time limit provision of the controlling Rule. However, the parties are not in agreement as to the consequences of this untimely denial of the appeal. The Organization contends that Rule 35 mandates that the Claimant be returned to service effective April 1, 1981, with back pay and rights unimpaired. The Carrier, relying upon National Disputes Committee (**NDC**) Decision 16, dated March 17, 1964, and other adjudicatory decisions, contends that its liability for back pay ceased on March 24, 1982, the day of its denial letter. other procedural contentions raised are found to be lacking sufficient merit.

With respect to the merits, the Claimant was charged with insubordination for two reasons. First, she failed to answer a telephone after allegedly being asked to do so by her Supervisor. Secondly, she allegedly did not comply with instructions to properly report her absence on three occasions. On the latter incidents, in addition to insubordination, the Claimant also was charged with a failure to protect her assignment. The Organization, in support of its contentions, essentially relies upon testimony adduced at the hearing. It maintains that this testimony shows that the Claimant denied the charges, and that the Carrier was unable to provide witnesses to substantiate its version of the events that occurred up to and including the incident under dispute.

The Carrier, for its part, provides its reasons for placing primary reliance upon the hearing testimony to arrive at its finding of guilt to the charges. Moreover, it cites the Claimant's past record to argue that, after **its** determination of guilt to the charges against the Claimant, her past record was such that its dismissal of the Claimant was not an unreasonable use of its discretion.

With respect to the procedural time limit contentions, we have carefully considered the arguments and authorities cited by the parties. We find, under the circumstances presented here, that **NDC** Decision 16 and relevant portions of the other awards cited which interpret the time limit rule, are persuasive and are applicable to the facts of this dispute. Accordingly, on this basis, with respect to the time limit violation, the Claimant is entitled to compensation for each work day from November 17, 1981, the date of her dismissal, to the date of Carrier's letter denying the claim on March 24, 1982. However, this favorable finding on this issue does not mean that the Claimant shall be restored to service, and the Board will consider the merits of this claim below.

Concerning the merits, we are not unmindful of the Organization's well-stated contentions **as** to the role of the Supervisor, the absence of witnesses, and the assertion that, in effect, the Claimant's testimony served to refute Carrier's allegations. **However**, all of these factors do not serve to overcome the Claimant's own admission that she had no intention to follow orders. **Her** acknowledgment as to intent, with respect to her relationship with her employer, the serious nature of the incidents leading up to the charge, coupled with the fact that she had been put on notice as to her work performance and the need to comply with legitimate orders, lends substance to the Carrier's decision to dismiss the Claimant. Accordingly, we find that this portion of the claim must fail, and it is denied.

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 respectfully 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 Agreement was violated.

A W A R D

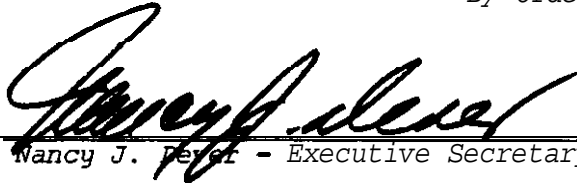
Claim sustained in accordance with the Opinion.

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

Attest: _____


Nancy J. Peyer - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May 1985.