

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25553
Docket Number CL-25727

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-9901)
that:

1. Carrier acted in an arbitrary and unjust manner, thus violating Rule 21 and other related rules of the Agreement, when it dismissed **Ms. Connie Parr** from service effective February 14, 1982, following **an** investigation held on February 8, 1983.

2. Carrier shall now be required to return Ms. Parr to service, expunge her record of this investigation and compensate her for all time lost, beginning February 3, 1983, and continuing until corrected.

OPINION OF BOARD: Claimant had been in Carrier's service about five years and was employed as a Clerk at Grand Junction, Colorado. About 7:00 A.M., February 3, 1983, Claimant was observed by two Supervisors as being in an apparent unfit condition for work due to intoxication, and, according to testimony given in a subsequent investigation, admitted drinking the previous evening. She consented to a Blood Alcohol Test, which test indicated an alcohol level of **.169**. In the State of Colorado **.05** is considered impaired and **.10** is considered intoxicated. On February 3, 1983, Claimant was notified:

"Formal investigation will be held at 9:00 A.M., Tuesday, February 8, 1983, in the Conference Room, Grand Junction, Colorado, to develop facts and place responsibility, if any, in connection with your allegedly reporting for duty in unfit condition about 7:00 A.M., February 3, 1983, as Clerk.

"Your presence **as** Principal, together with a representative of **your** choice, if desired, is required. Should you desire any witnesses to appear in your behalf, notify office of the Assistant Superintendent promptly.'

The investigation was conducted as scheduled, with Claimant present and represented. A copy of the Transcript of the Investigation has been made a part of the record. Substantial evidence was presented at the Investigation, including the result of the blood alcohol test, in support of the allegation that Claimant was in an unfit condition to work when reporting for duty about 7:00 A.M., February 3, 1983. On February 4, 1983, Claimant was notified of her dismissal from service.

The Organization contends that Carrier's Submission to the Board was not signed and, therefore, is not properly **before** the Board for consideration. The Organization has called attention to our Award No. 23170 dealing with an unsigned Submission. **However**, in Award No. 23170 we quoted from Black's Law Dictionary defining signature:

-SIGNATURE: The act of putting down a man's **name** at the end of an instrument to attest its validity, the name thus written. A 'signature' may be written by hand, printed, stamped, typewritten, engraved, photographed, or cut from one instrument **and** attached to another, and a signature lithographed on an instrument by a party is sufficient for the purpose of signing it; . . ."

The Carrier's Submission to the Board in the present case contains a typewritten signature, and given Black's definition of signature, the procedural objection by the Organization **must** be and is dismissed. (See Second Division Award No. 9701.)

The Organization also contends that because the Claimant enrolled in the Employees Assistance Program, and, according to the Organization, completed the requirements, she should be given the opportunity to return to work, or "given a second chance." We have been referred to no Agreement rule so stipulating. In our Award No. 24531, in discussing such issue, we held in part:

"In the on-property handling and in its submission to this Board, the Organization based its plea on behalf of Claimant's attendance, after his dismissal, in an Alcohol and Drug Abuse Program that had been previously initiated by the Carrier. We consider such a plea as a plea for leniency, which addresses itself to the Carrier and not to this Board."

In Second Division Award No. 8636 it was held:

"Much was said about carrier's employee assistance program in the record of this case. This board has universally supported carriers and organizations who utilize employee assistance programs to salvage **employees**, but we must leave these decisions to the parties involved."

In the handling of the dispute at the Board level, contention was made by the Representative of the Organization as to an independent appellant review being a required necessity to insure protection of Claimant's rights. We have reviewed the entire record, and we do not find where such contention was made in the handling of the dispute on the property. It may not properly be raised at the **Board** level.

Based upon the entire record, there is no proper basis for disturbing the action of 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

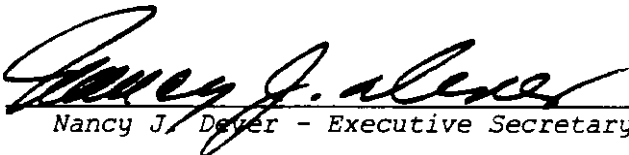
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1985.