

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**Edward F. Carter, Referee**

---

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**THE DENVER AND RIO GRANDE WESTERN RAILROAD  
COMPANY**

**Wilson McCarthy and Henry Swan, Trustees**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood, that:

1. Miss Ellys E. Thompson, Clerk, Treasurer's Office, Denver, Colorado, be reinstated with full seniority rights intact, and that
2. Miss Ellys E. Thompson be compensated for all time lost.

**OPINION OF BOARD:** Claimant was dismissed from service on July 5, 1945, for repeatedly being late in reporting for work. The Organization requests that Claimant be reinstated with seniority rights restored and that she be compensated for all time lost.

The record specifically recites nine instances between January 5, 1945 and June 16, 1945 in which Claimant reported late for work. In these instances, she was from 5 to 40 minutes late each time. The record shows and Claimant admits that she was warned several times and as early as February 5, 1945, she was informed by her superior that any further tardiness on her part would necessitate her removal from service. Claimant admits being late to work on each of the occasions charged. Clearly, therefore, she is subject to discipline under her own evidence. The serious question is whether the Carrier was warranted in inflicting so serious a punishment as dismissal from service.

In this connection we desire to point out that Claimant entered the service of the Carrier as a Messenger on February 8, 1943. She was promoted to Clerk on March 4, 1943, and promoted to Payroll Clerk in the Treasury Department on January 3, 1944. It was not until January 1945 that Claimant began reporting late for work. The record shows that during the same period she began absenting herself from work for various reasons. Although the Carrier declined to discipline her for absenteeism, it indicates a growing indifference to her work and the rules of the Carrier applying thereto.

On the other hand, any employe however loyal and well intentioned he may be, is likely to report late occasionally. Wartime conditions contributed their part during this period in making it difficult to keep appointments and

a few of Claimant's delays in reporting for work could well have been attributed to them. There is also evidence in the record indicating some ill feeling between the Claimant and the Treasurer growing out of her request concerning the calculation of her sick leave and vacation pay. These circumstances constitute matters in mitigation of the seriousness of the offense and cannot operate to relieve the Claimant from discipline. We are inclined to give the Claimant the benefit of every fact in her favor and hold that dismissal from service was excessive disciplinary action under all the evidence and circumstances shown. We think that Claimant is entitled to have her seniority rights restored without compensation for time lost. We feel obliged to suggest also that our action must not be construed as a license to continue to ignore the rules of the Carrier relative to reporting for work and performing her assignment in the manner contemplated by the Agreement.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 disciplinary action was warranted but dismissal from service found to be excessive under the circumstances shown.

#### AWARD

Claim (1) sustained. Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.