

Award No. 6057

Docket No. CL-6176

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

LOUISIANA AND ARKANSAS RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that—

Miss Mary Janice Eason, General Clerk, be re-instated and paid for all monetary loss account dismissed from the service March 13, 1951.

OPINION OF BOARD: This is a discipline case involving Employee Eason, General Clerk, seniority date of December 1, 1943, in the office of the Carrier's Superintendent Car Service Department at Shreveport, Louisiana, who was suspended from service on March 13, 1951. Investigation hearing was held on March 21, 1951; notice of hearing was given by letter dated March 16, 1951. On March 29, 1951, the employee was notified that she had been dismissed from service as of March 13, 1951.

The suspension, notice of investigation of charges, hearing and notice of dismissal were given to the Claimant by the Carrier under Rule 24 of the effective Agreement.

The Carrier contends that this claim is barred under Rule 27 of the effective Agreement. Rule 27 reads as follows:

"Rule 27. In all appeals covered by Rules 24, 25 and 26, the decision of the highest officer designated by the carrier to whom such appeals may be made, shall be final and binding, unless, within thirty (30) days from the date of his decision, he is given written notice by the General Chairman that his decision is rejected."

The Carrier relies on a letter dated July 19, 1951, reading as follows:

"Mr. Jas. L. Webster,
General Chairman, Brotherhood of Railway and Steamship Clerks,
P. O. Box 1535,
Shreveport, Louisiana.

"Dear Sir:

"Replying further to your letter of June 22nd, file 2-I&A-CA #11, concerning—

Claim for restoration of Janice Eason to service at Shreveport, and pay for time lost.

"I have reviewed the file in this case and am in accord with the views expressed by Messrs. Sutter and Hooper in their replies to your appeals. However, am willing to discuss the case with you at our next conference.

Yours very truly,

/s/ J. M. Prickett"

This letter is not a final decision of the Carrier as it leaves the door open for further discussion. No final decision was received by the Organization from the Carrier until the letter of October 2, 1951, from J. M. Prickett, the Carrier's Vice President, to Jas. L. Webster, General Chairman of the Organization. Rule 27 of the effective Agreement has not been violated by the Organization.

The Claimant is charged with insubordination in a manner which she addressed Chief Clerk R. F. Tucker when she told her superior officer that "By God, I will not stop until others are made to do so."

After the investigation Claimant was dismissed from service as of March 13, 1951. The Organization asks this Board to reinstate Claimant and pay her all monetary loss due to her dismissal from service from March 13, 1951.

The following principles have been laid down and adopted by this Board, as general and fundamental, each of which are pertinent and applicable in our determination of the merits of this claim:

(" In its consideration of claims involving discipline, this Division of the National Railroad Adjustment Board (1) where there is positive evidence of probative force will not weigh such evidence or resolve conflicts therein, (2) when there is real substantial evidence to sustain charges the findings based thereon will not be disturbed; (3) if the Carrier has not acted arbitrarily, without just cause, or in bad faith its action will not be set aside; and (4) unless prejudice or bias is disclosed by facts or circumstances of record it will not substitute its judgment for that of the Carrier." Award 2769).

From a careful reading of the submission of both parties and a careful reading of the transcript of the testimony taken at the hearing on March 21, 1951, this Board finds that the charge of insubordination has been substantiated by the Claimant herself when she stated in her testimony on being questioned by Mr. Webster, "I would be glad to sit down and be quiet if the others did, too." Other testimony offered showed that these words or words to their effect were uttered by the Claimant; whether these words were preceded by "By God" or "By Golly" is of no import nor are they profane. When this Claimant answered her superior back and told him

under what conditions she would carry out his order, she was guilty of insubordination, the charge placed against her. The commotion caused by the Chief Clerk in putting castors on chairs and the noise resulting was before the Carrier to take into consideration, also his manner of approach to this Claimant when he ordered her back to her desk. However, there are degrees of insubordination that should have been taken into consideration by the Carrier when it substantiated the charge. Under the above circumstances, this type of insubordination does not warrant dismissal from service where there had been seven years of service and a record that sets forth no testimony, by the Carrier, that discipline has ever been given to this Claimant. Testimony was given by the Claimant in response to a question put by the Carrier representative as follows:

Q. In those previous fusses that you have had, has Mr. Tucker ever **threatened** to take action similar to that taken in this incident?

A. Yes, Sir. It isn't only me but there have been several others in the office also. (Emphasis added).

This shows that discipline was only threatened. This Claimant should have her seniority to service restored with seniority rights unimpaired but a denial of monetary loss from March 13, 1951.

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 Employee involved in this dispute are respectively Carrier and Employee 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 disciplinary action was warranted but dismissal from service found to be excessive under the circumstances shown.

AWARD

Claimant restored to service with seniority rights unimpaired; monetary loss denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1953.