

Award No. 6062

Docket No. CL-6026

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

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

(1) Mrs. Harriet Keller, who was employed as a Matron at Randolph Street Suburban Station, Chicago, Illinois, was improperly and illegally dismissed from the service on June 6, 1947, account of alleged misconduct on date of May 13, 1947, but which charge not sustained by the evidence, therefore, the dismissal being in violation of the current Agreement extant between the parties, and

(2) That the Carrier be required to reinstate Mrs. Harriet Keller to the service with her full seniority rights unimpaired and, that she be reimbursed for all wage losses sustained (less any amount earned in other employment) as a result of the Carrier's arbitrary and illegal action in dismissing her without justifiable cause.

OPINION OF BOARD: The System Committee of the Brotherhood claims Harriet Keller, matron in the ladies' washroom at Carrier's Randolph Street Suburban Station in Chicago, Illinois, was on June 6, 1947, improperly and illegally dismissed from its service and asks that, because thereof, she be reinstated to service with full seniority rights unimpaired and reimbursed for all wages lost, less any amount she earned in other employment.

The first contention is that Claimant did not have a "fair hearing" within the contemplation of Rule 24 of the parties' controlling agreement because the following provisions thereof were not fully and fairly complied with, to wit:—

"At a reasonable time prior to hearing he shall be apprised of the precise charge and shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by a counsel of his choice."

This contention is discussed in two phases: The first, that Claimant was never sufficiently informed of the "precise charge" which was being made against her; and the second, that she did not have sufficient time, after being notified of the charge against her, to secure the presence of necessary witnesses and to secure representation of her choice at the hearing thereon. In regard to the second phase of this contention much is contained in the record that the transcript of the testimony does not fully and correctly reflect what was said at the hearing, particularly as it relates to the contention that Claimant made a request for continuance. In this respect we must accept the transcript, as certified by the party taking it, as a true and correct transcription of all that was said.

The charge made against Claimant is in the following languages: "With reference to the verbal complaint made by you to me on May 13th and which was handled by me, verbally, at that time, I am now in receipt of a written charge that your conduct with regard to this case was unbecoming an employe of the Illinois Central Railroad."

The precise charge made by this language is that Claimant's conduct in connection with the incident she complained of was "unbecoming an employe" of the Carrier. That she was aware of the incident out of which the charge arose is self evident because she had made personal complaint thereof to Train Master J. J. Berschinski who signed the letter containing the charge. Under these circumstances we find the charge, as made, meets the requirements of the rule.

The letter containing the charge was dated June 2, 1947. It was mailed on June 3, 1947, and Claimant received it on June 4, 1947. The hearing was set for 2:00 P. M. on June 5, 1947, in the office of the Train Master. It was held at that time. Claimant appeared at the hearing and brought with her Jewell Johnson as her representative. No objection appears to have been made at the beginning of the hearing that Claimant had not had sufficient time to secure the presence of necessary witnesses nor was any continuance for that purpose ever requested. In fact, when Claimant, at the close of the hearing, was asked if she considered the investigation had been conducted "in a fair and impartial manner," she replied, "Yes, I do, it has been conducted fairly." Surely if she had made a request for a continuance which had been denied, or if she felt a continuance was necessary to obtain witnesses, she would not have answered as she did.

What is a reasonable time for this purpose, within the contemplation of the rule, must necessarily vary considering all the circumstances surrounding the individual case. Sometimes very little time would be sufficient while in other cases a longer time would be required. Each case must necessarily stand on its own factual situation. However, the parties themselves, at the time of the hearing, know best whether they have had a reasonable length of time in which to prepare their case and if no objection is made on that ground at the opening thereof it will be presumed that sufficient time was had for that purpose. If, at the opening of or at any time during the hearing, Claimant, or her representative, feels a continuance is necessary for that purpose a request to that effect should be made. If made and denied then that question is properly here and we can consider it on its merits. However, if no such request is made, then there is nothing in that regard to be considered on an appeal. We find the contention to be without merit.

A question is raised as to the sufficiency of the evidence to sustain Carrier's finding that Claimant was guilty of the charge it had made against her. In this regard the rule does not specify the type of evidence that may or should be adduced but a fair trial requires that some relevant evidence of a substantial character supporting the charge made must be produced to support a finding of guilt. In considering this question we are limited to a consideration of the evidence adduced at the investigation or hearing.

The incident happened in the ladies' washroom located in Carrier's Randolph Street Suburban Station in Chicago. Claimant was the matron in charge thereof. A patron was using a pay toilet as a place for changing her shoes. Claimant sought to make her desist using it for that purpose as there were many other patrons in the washroom waiting to use the facilities this patron was occupying. There is relevant evidence of a substantial character which would support a finding to the effect that Claimant used uncouth and abusive language in addressing this patron and certainly language unbecoming an employee occupying the position of matron.

Has Carrier abused its discretion and arbitrarily assessed unwarranted discipline by dismissing this employee? She entered Carrier's service on August 25, 1937. This tenure of service gave her valuable seniority rights. Such rights should not be arbitrarily destroyed. Carrier, in considering the question of penalty, could properly consider Claimant's past record but there appears to be nothing on it. In this respect Carrier introduced in evidence, and apparently considered it in imposing the penalty of dismissal, testimony concerning unrelated incidents with which Claimant had never been charged or tried, particularly the apparent unsatisfactory personal relationship that existed between Claimant, Patrolman O'Malley of the Carrier, and Policewoman Miss Alice McCarthy of the Chicago Park District. Evidence of these facts did not properly relate to the charge here made. They should not have been considered by the Carrier. Under all the circumstances disclosed by the record which could properly be considered by the Carrier we find the Claimant's dismissal to be an arbitrary act and unwarranted.

Carrier contends we should not consider the claim presented because of the dilatory manner in which it has been handled. It is true that the Railway Labor Act contemplates that disputes of this character shall be handled in a prompt and orderly manner but no time limit is therein provided in which it must be done. Neither does the parties' effective agreement contain such a provision. We think, as to the question of the Claimant's guilt or innocence, the element of time is not material. But, as to pay for all time lost, the delay presents quite another picture because it would accumulate in amount to the extent the matter was unnecessarily delayed.

The facts of this case would justify Carrier in suspending Claimant from her work for a substantial period of time. The long delay before the matter of her restoration could be considered here was because of the manner in which the claim was handled on the property by the Organization. Under these circumstances we think both parties at fault, Carrier for imposing an unwarranted penalty and Claimant in failing to expedite an appeal.

In view thereof we find justice will be served by restoring Claimant to the service of the Carrier on or before February 16, 1953, with full seniority rights but denying her any compensation for the time she has been out of service.

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 Carrier violated the Agreement.

AWARD

Claim to reinstate Mrs. Harriet Keller to the service of Carrier with full seniority rights unimpaired sustained, to be made effective on or before February 16, 1953. Claim that she be reimbursed for all wages lost, less any amount earned in other employment, denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1953.