

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

(1) Carrier violated Rules of the Agreement between the parties effective March 1, 1954, in the treatment accorded employe Mrs. Margaret E. Collins of the Fort Worth, Texas, station force when Management dismissed her from service effective October 5, 1955.

(2) Mrs. Collins' record be cleared of the charges preferred against her by Superintendent Foster September 26, 1955, and that she be reinstated to service with seniority and all other employment rights restored and compensated for all wage loss sustained retroactive to October 5, 1955.

OPINION OF BOARD: At the outset we must dispose of a procedural question raised by Carrier that the instant claim is not properly before us under Section 1(c) of Article V of the National Agreement of August 21, 1954.

The claim was denied by Carrier's highest officer on November 22, 1955. Under Award 7850 this Board has held that an Organization, by letter to this Division within 9 months from the date of final denial by Carrier's highest designated officer, "* * * citing the dispute at issue and serving notice of its intent to file an ex parte submission covering the dispute within 30 days, * * * 'instituted proceedings' within the meaning of Article V, Section 1(c) of the applicable agreement."

We so hold with respect to Organization's original letter, signed by President George M. Harrison and dated August 10, 1956.

We will reject Carrier's argument that Mr. Harrison's subsequent change of the date of the wage agreement referred to is of any moment. On that point we will accept statement made in behalf of the Organization that "* * * there appeared an obvious error in the date of the collective agreement shown

in paragraph (1) of the Statement of Claim * * *. Such date, and that alone, was corrected by the filing of the 'corrected' notice, * * *."

"The effective date of the Agreement itself would have applied in either event."

As for the merits of the claim itself we have carefully examined the record and fail to find any evidence of arbitrary or capricious action on Carrier's part in dismissing Claimant on charges of

"* * * responsibility for being absent without proper authority from 12:01 AM until 12:50 AM, September 17, 1955, and

"* * * with being in no condition to properly perform her duties as a Caller after reporting for duty on this date."

She was granted an investigation, the transcript of which is replete with evidence substantiating the charges. It need not be detailed here.

This Board has adopted many Awards which have held that we will not substitute our judgment for that of management in matters of this kind unless it is clearly shown that Management was arbitrary or capricious in exercising its functions.

In the absence of such showing the claim will be denied.

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 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1958.