

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20199
Docket Number CL-20339

Frederick R. Blackwell, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and Station
(Employees
PARTIES TO DISPUTE: (
(Burlington Northern Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7364) that:

1. The Carrier violated the provisions of the March 3, 1970 Rules Agreement by discharging Mrs. J. Gloria J. Hankins, Correction Clerk, Freight Accounting, St. Paul, Minnesota, from the service of the Company, effective March 17, 1972; and,

2. The Carrier shall now be required to reinstate Mrs. J. Gloria J. Hankins into the service of the Company with seniority and other rights unimpaired.

OPINION OF BOARD: This is an appeal from Claimant's dismissal from Carrier's service, effective March 17, 1972. The dismissal was made after a hearing and findings that Claimant was in possession of a loaded, 22 calibre revolver while on duty in violation of Rule 708 of Carrier's Safety Rules. Rule 708 reads as follows:

"Employees are prohibited from having loaded or unloaded firearms in their possession while on duty except those employees authorized to do so in the performance of their duties or those given special permission by the Superintendent."

The hearing record shows that Claimant admitted possession of the loaded revolver while on duty; that two co-employees testified to their seeing the revolver on Claimant's desk; and that Carrier's security officer saw the revolver, fully loaded with six cartridges, when it was handed to him by Claimant. Thus, there is no doubt that Carrier's evidence proved the gravamen of the charge. Claimant's defense was one of extenuating circumstances. Both the Claimant and her attorney testified to a highly troubled domestic history which involved her being physically assaulted, with resultant hospital confinement, and which ultimately induced strong feelings of fear for her personal safety and that of her children. Attempts to obtain protection from law enforcement authorities had been unavailing and, in addition, Claimant had received reports while on Carrier's

premises which caused her to feel fearful for her safety. Because of these fears, and her need for protection, the Claimant decided on a policy of self-protection by means of the revolver. She did not have a permit for the revolver from the State in which the herein incident occurred. However, she stated that she had a permit from a different State and never considered the permit as being limited to the boundaries of such State.

The Petitioner argues that, in view of the extenuating circumstances shown on Claimant's behalf, the extreme penalty of dismissal was unreasonable and unfair. More specifically, the Petitioner asserts that Claimant's serious domestic troubles led her to take an irrational action for which she should not be held responsible.

The record shows that Carrier gave consideration to these extenuating circumstances and found them wanting. We shall not disagree. Claimant's plight arouses utmost compassion and sympathy. However, compassion for a single employee cannot be allowed to transcend the rights of other employees to have protection against injury while on Carrier's premises. Obviously, the loaded revolver in Claimant's possession posed a serious risk of injury to all employees within its firing range. And, also obviously, Rule 708 reflects Carrier's obligation to protect all employees, including Claimant, from injury due to the misuse of firearms on Carrier's premises. In the instant dispute the Carrier's action was taken to carry out that obligation and, on the whole record, we find no basis for saying that Carrier's action was unreasonable or arbitrary. Accordingly, we shall deny the claim.

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

The Agreement was not violated.

Award Number 20199
Docket Number CL-20339

Page 3

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1974.