

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21043  
Docket Number CL-21039

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship  
( Clerks, Freight Handlers, Express and  
( Station Employes  
(  
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-7741) that:

1. Carrier violated the Clerks' Agreement, in particular Rule 18, when it dismissed Mrs. Mary B. Cook from its service April 17, 1974, on so-called charges that were unproven.
2. Carrier's action was arbitrary, harsh and an abuse of discretion.
3. Carrier shall now be required to reinstate Mrs. Cook to service with all rights unimpaired and compensate her for all losses sustained, including any Health and Welfare benefit payments she may be required to pay due to Carrier's action, and claim is to bear compound interest of one percent per month starting with the sixtieth day after date of dismissal and continuing each month thereafter until returned to service.

OPINION OF BOARD: Following an investigation on the property, by letter dated April 17, 1974 Carrier notified Claimant Mary B. Cook of her dismissal from service on the ground that she was guilty of the charges that she "indulged in conduct unbecoming an employe when you entered the office of Mr. E. C. Pidgeon, Purchasing Agent, on March 14, 1974, shouting and using profane and obscene language to him concerning a fellow employe and refusing to remain in his office and explain your conduct when directed to do so." The dismissal letter also referred to claimant's prior record which allegedly disclosed that she had "previously indulged in a pattern of impolite, vulgar, profane and discourteous conduct and displayed an insubordinate and disruptive attitude."

There is evidence in the record supporting Carrier's determination that at about 9:30 A.M. on March 14, 1974 claimant engaged in the conduct concerning which Carrier found her guilty. A fellow employe of claimant (General Clerk R. M. Felch) who was present when the involved incident occurred stated at the investigation that he did not recall claimant using improper language in registering her complaint about another individual

(V. N. Berns) with Purchasing Agent E. C. Pidgeon, and claimant denied using such language, thus leaving the Purchasing Agent as the sole witness testifying that claimant used language which fairly may be characterized as "profane and obscene". But Carrier is not foreclosed from relying on the Purchasing Agent's testimony simply because it is not corroborated by the testimony of another individual.

We find no merit in other procedural points raised in claimant's behalf. Claimant engaged in conduct on March 14, 1974 which exposed her to disciplinary action. Carrier was entitled to consider her prior record in determining the degree of penalty to be assessed. The record shows claimant had been warned on prior occasions about similar on-the-job misconduct. Carrier did not abuse its discretion in imposing the penalty of dismissal in this instance.

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 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1976.