

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21068
Docket Number CL-21159

Joseph A. Sickles, 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-7861) that:

1. Carrier violated the Working Agreement with an effective date of March 3, 1970 between the parties hereto, when on the seventh day of February, 1974, it suspended Ms. Jacqueline Haynes, PBX Telephone Exchange Operator, PBX Extra List, Chicago Regional Office Building, Chicago, Illinois.

2. Carrier violated the Agreement between the parties hereto when on March 10, 1974, it discharged Ms. Jacqueline Haynes.

3. Carrier shall restore Ms. Jacqueline Haynes to service with seniority rights unimpaired, showing exoneration, including her right to return to her former status as an Extra List Employee, and be reimbursed for any and all loss of compensation incurred, including any loss suffered by her and her dependents as a result of the effect of her dismissal upon Group Policy Contract GA-23000 at the present time or in the future.

OPINION OF BOARD: On February 6, 1974, Claimant Haynes and Ms. Jasos engaged in a verbal dispute. When ordered to leave the telephone room by the Chief Telephone Operator, Haynes and Jasos continued their dispute, outside of the building, and a physical altercation ensued. On the following day, Claimant was notified to attend an investigation on a charge of conduct unbecoming an employee, and absenting herself from her telephone exchange operator duties.

Subsequent to investigation, Claimant was discharged from service.

Claimant asserts that dismissal was not justified, and her investigation was not conducted in a fair and impartial manner.

The record shows that certain of the employees in the telephone room were engaged in a discussion, on the date in question, as to the procedures for "taking breaks." The discussion erupted into a loud yelling confrontation between Claimant and Jasos, to the point that the Chief Operator told both participants to leave the room so that the other operators could continue to perform their duties. After some delay, during which the heated conversation continued, the two employees went outside of the building and continued the disagreement, which resulted in a physical confrontation (including liberal use of

"vulgar" epithets) and it became necessary that other individuals physically restrained the combatants from continuing the "brawl."

Jasos concedes that there was a loud verbal confrontation and that she suggested that she and Claimant "go outside" to settle the matter. Moreover, she stated that once outside, she suggested that they step around to a nearby alley, rather than continue the matter in front of the building and "make a big scene." She denies that it was ever her intention to invoke, or engage in, a physical battle, but that Claimant jumped her from behind, at which time she had no alternative but to defend herself.

Claimant states that she did not engage in a verbal dispute with Jasos on the day in question, other than to tell her to "go to Hell" in a moderate voice. Moreover, she had no idea as to why Jasos suggested that they leave the building in order to settle differences. She has no recollection of the Chief Operator asking her to leave the room, but she did depart when Jasos said she was going to "...knock the hell out of me", to which she replied, "O.K., let's do it."

Claimant seems to concede that she made the first physical contact when she "grabbed" Jasos by the shoulders, but she does not recall why she grabbed her. She also concedes that she kicked at Jasos after the two were separated.

One witness indicated that both participants employed profanity, and they both indicated that a physical altercation was in the offing when they departed the telephone room.

We have considered Claimant's insistence that Carrier has violated her rights in the handling of this matter. She states that the charges were misleading and did not properly appraise her of the nature of the accusations against her. The charge spoke in terms of conduct unbecoming an employee, but at the investigation - and in subsequent steps - Carrier placed certain reliances upon specific rules. But, as we read those rules, they are directly related to employee conduct. Clearly, the record fails to disclose that Claimant was misled - and thereby precluded from formulating her defense - or that her rights were, in any manner, prejudiced.

We have also considered the fact that the individual who served as accuser and as a witness also participated in the early stages of the appellate procedure. We freely concede that such a procedure could, under a given set of circumstances, operate to the substantial prejudice of a Claimant. However, based upon this record, and the admissions of guilt contained therein, any suggestion of prejudicial error would be highly conjectural.

Finally, we consider the merits of the dispute. It is suggested that Carrier has failed to satisfy the burden of proving which participant was the motivating factor in the events which resulted in the physical altercation, and

accordingly, the disciplinary action should be set aside. Without unduly burdening this document with a lengthy recitation of the pertinent evidence of record, we are inclined to find that the actions of both employees showed a willingness to engage in rather severe misconduct which was clearly contrary to the best interests of their employer. In every instance such as the one here under review, it is safe to say that one of the parties ignited the spark. But, it is equally safe to state that both parties had ample opportunity to restore a sense of propriety to the matter before it became totally uncontrollable.

This record leaves no doubt that both Claimant and Jasos were committed to settle their differences in a physical manner when they left the telephone room. Moreover, we feel that the record contains sufficient evidence, including Claimant's own testimony, to substantiate guilt. The quantum of discipline was not excessive.

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

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.