

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21984
Docket Number CL-21895

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Southern Pacific Transportation Company
((Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8276, that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it unconscionably and without justification dismissed Mrs. Donna Ramsey from service following investigation; and,

(b) The Southern Pacific Transportation Company shall now be required to restore Mrs. Donna Ramsey to service with all her rights unimpaired; to reimburse her for all expenses incurred which would have otherwise been borne by the Carrier if she had not been dismissed from its service, and to compensate her for all wages, hospitalization, Travelers Insurance Company loss, Aetna Life and Casualty loss, in each instance and each date commencing January 17, 1976, until she is restored to service.

OPINION OF BOARD: Claimant was dismissed from service on February 12, 1976, following a hearing, for violation of portions of Rule 801 of the Carrier's General Rules and Regulations, reading as follows:

"Employees will not be retained in the service who are . . . quarrelsome or otherwise vicious . . .

Courteous deportment is required of all employees in their dealings with . . . each other. Boisterous, profane or vulgar language is forbidden . . ."

The Organization, at the outset, argues that the claim should be allowed on procedural grounds alone, in that the Carrier's Superintendent denied the claim prior to conference and thereafter did not sufficiently explain his reasons for denial following conference.

The Board does not find these allegations to be sufficiently substantial to affect the progress of the claim. Conference was held, as required, and there is no doubt as to the basis of the Carrier's decision.

The Board finds that the hearing showed clearly that the Claimant was guilty of conduct contrary to the cited portions of Rule 801. The Claimant herself admitted most of the transgressions of which she was accused. The Board finds, however, that the disciplinary action taken was excessively severe in relation to the specific actions taken by the Claimant.

In connection with her improper and profane language to a Carrier official, the Claimant nevertheless was not found to be in-subordinate in the sense of failing to perform her duties as ordered. While the language is unacceptable, it was not used to her direct superior but in a heated conversation with another carrier official. The exchange was limited to words, with no violence or threat of violence involved.

On a number of previous occasions, the Carrier had found it necessary to warn the Claimant as to her failure to meet the standards expected of an employee, but in none of these instances was any formal discipline imposed. On the first imposition of discipline for a behavioral offense, a more moderate penalty is appropriate. This is in keeping with the principle of using discipline as a corrective measure -- a procedure applicable except when the offense is of the most serious nature.

The Board finds the dismissal too severe and will modify it to a penalty of 60 calendar days' suspension. For the period during which the Claimant has been out of the Carrier's service beyond the initial 60 days, the Board will sustain the Organization's claim as to reinstatement and payment for net wage loss, as provided in Rule 52. The remainder of the Organization's claim is denied.

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;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated to the extent shown in Opinion.

A W A R D

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.