NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 21997
THIRD DIVISION Docket Number CL-22013

Joseph A. Sickles, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Elgin, Joliet and Eastern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8355) that:

1. The Carrier violated the effective Clerks' Agreement when following an investigation it discharged Clerk Susie Mitchell with a seniority date of April 5, 1971, from its service effective February 25, 1976, without just cause;

2. The Carrier shall now be required to restore Ms. Susie Mitchell to service with her seniority and all other rights unimpaired; and shall compensate her for all time lost as a result of her dismissal from service; and shall compensate her an additional amount as interest equal to six percent (6%) per annum, compounded daily on all monies due her; and shall clear her record of the charges placed against her.

OPINION OF BOARD: Claimant was notified to be present at an investigation concerning an allegation of (1), refusal to perform "duties assigned to you on your janitorial position" and (2), false pretense of illness "as a basis for not completing your...janitorial assignment."

Subsequent to the investigation, Claimant was discharged from service.

Claimant asserts that the Hearing Officer prejudged the case because a decision was rendered on the day following the one and one-half hour investigation, without the benefit of a transcript. While it may not be the ideal method, the Hearing Officer heard the testimony and was free to draw conclusions even before the transcript was prepared. He may proceed at his peril when he does so, but we cannot conclude that Claimant's rights were prejudiced in this case.

At 7:00 a.m. on the day in question, Claimant reported to the Chief Yard Clerk for a janitor job. She was advised that she was going to work at the Terminal Building cleaning windows and floors. She replied that had she known that she would be performing that type of work, she would not have accepted the call. After some discussion of the job content and her duties, the Claimant was sent to the terminal and told to report to the Yardmaster who would identify the floors to be cleaned. Thereafter, she left the area, but within a short time, she called the Chief Clerk and advised that she was "going home sick."

The Yardmaster testified that he had been advised that Claimant was the extra janitor on the day in question and that he was asked to show her the areas to be cleaned. When Claimant arrived, he stated: "...you're supposed to clean the windows and I'll take you back and show you the spot in the washroom on the floor that has to be cleaned up." At that point, she said she wasn't going to "clean any floors and windows and what was the matter with the other regular janitors." She immediately walked to the telephone, called someone and said "you'll have to get somebody else." She then left the building, only having spent about 5 minutes there.

When the Claimant testified, she questioned the Yardmaster's right to give her directions, she denied that she had objected to the job content in her original discussion with the Chief Clerk, and she stated that she didn't tell the Yardmaster that she wouldn't do floors and windows. Rather, she insisted that she left because she was sick. Further, she stated that she raised a question to the Yardmaster as to entering the men's locker room:

> "I asked him what did he want me to do. I told him Herb sent me over and he was supposed to tell me what to do and he said come and let me show you. But I knew about the windows anyway - he said come and I'll show you - I said there are people back there changing clothes between 7 o'clock and 7:30 - they have other guys coming in all at the same time and I am a woman and that is a men's locker room."

The Yardmaster denied that Claimant said anything about not going into the locker room, although, in retrospect, he conceded that

it might have been a bad time to take her to the locker room.

Much has been made over the fact that Carrier was attempting to compel the Claimant to enter a men's locker room at a time when male employes were occupying same. Surely, if the record showed, to our satisfaction, that such was the motive of the Chief Clerk or Yardmaster (or if we were convinced that she had raised such an objection at the time which was ignored) we would look upon the matter in a different light.

Further, there has been some inference that there was something particularly odious about the "spot" in the washroom. If that were the case, then perhaps other considerations might be pertinent. But, the record simply is not in the posture suggested by the Claimant.

We feel that there was sufficient evidence presented to support the Carrier's conclusion that the Claimant clearly refused to "do windows and floors" and that she left the scene with a rather sudden illness which suggests that it was feigned. We will 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 Employes involved in this dispute are respectively Carrier and Employes 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: A. W. Paulos
Executive Secretary

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