

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22034
Docket Number CL-22156

Irwin M. Lieberman, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
GL-8444, that:

1. The Carrier violated the currently controlling Agreement between the parties to this dispute when on August 19, 1976, the Superintendent imposed the extreme penalty of dismissal on the person of Crew Caller - Bus Operator Willia V. Secrett.

2. The Carrier violated the currently controlling Agreement between the parties to this dispute when on August 14, 1976, the Superintendent withheld Crew Caller - Bus Operator Willia V. Secrett from service pending formal investigation.

3. Carrier shall now be required to reinstate Crew Caller - Bus Operator Willia V. Secrett to service and compensate her for all time lost.

OPINION OF BOARD: Claimant herein was discharged August 19, 1976, following an investigation, for insubordination. The incident in question took place on August 14, 1976 and on August 16, 1976 Claimant was served with charges and withheld from service (by the same document) pending the results of the investigation. Following the dismissal, by letter dated February 2, 1977, Carrier offered to reinstate Claimant on a leniency basis without prejudice to the claim for lost pay. This offer was refused by Claimant.

At the outset it must be noted that the evidence offered at the investigation, including Claimant's testimony, established that she did indeed refuse to follow her supervisor's instructions concerning the delivery of a pouch of mail on August 14th. This evidence was sufficient to support Carrier's conclusion that she was guilty of insubordination. Although it was not a major incident, Claimant should have obeyed the instructions and subsequently used the appropriate machinery to protest the allegedly improper request of her supervisor.

+ The question of the penalties imposed by the Carrier raises a number of questions. First, with respect to Carrier's act of removing Claimant from service prior to the investigation, we are most dubious as to whether her actions on August 14th constituted a "proper case" under Rule 45 warranting suspension. We think not for two reasons. In the first instance, if her conduct warranted suspension prior to the hearing, Carrier should not have waited until several days later (after receipt of the letter of August 16th) to remove her from service. If her conduct constituted a hazard it should have been so considered immediately, not after a hiatus. Secondly, the incident on August 14th did not meet the test, long relied upon in this industry, of conduct which could potentially prove hazardous to the employee, to other employees, to the public or to Carrier's property. Thus, Claimant should be compensated for all time held out of service prior to her receipt of Carrier's letter of dismissal dated August 19, 1976.

+ ✓ Carrier's offer of reinstatement on a leniency basis, dated February 2, 1977 is an important aspect of this dispute. An offer such as that contained in the aforesaid letter, which does not prejudice Claimant's option to pursue the back pay claim and total exoneration, must be considered a clear-cut termination of any Carrier potential liability. Such an offer should not be lightly disregarded since Claimant has no right of recovery beyond the date of such an offer. In this case, Claimant clearly erred in not accepting Carrier's offer.

X.3 With respect to the penalty imposed in this dispute, we cannot accept Carrier's determination. The insubordination involved simply did not warrant dismissal. We must conclude, therefore, that the penalty was arbitrary and excessive. Consequently, we shall order Claimant's reinstatement, with seniority and other rights unimpaired, but without pay for time lost. The period from the date of her dismissal until February 9, 1977 shall be considered a suspension. The period after February 9, 1977 warrants no consideration; however, she must be offered reinstatement within thirty (30) days from the date hereof. She of course will be compensated for the time held out of service prior to the dismissal, as indicated above.

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 violated.

A W A R D

Claim sustained in part, as indicated in the Opinion above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April 1978.