

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22525
Docket Number CL-22681

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8636) that:

1. The Carrier acted in an arbitrary, capricious and unjust manner and violated the agreement between the parties when on February 28, 1978 it dismissed clerical employee, Robyn D. Bartosch, from the service of the Carrier.

2. In view of the foregoing arbitrary, capricious and unjust action of the Carrier, it shall now be required to:

(a) Restore clerk Bartosch to the service of the Carrier with all seniority, vacation and other rights unimpaired.

(b) Pay clerk Bartosch for all time lost commencing with 3:20 a.m. on February 23, 1978, and continuing until claimant is restored to service, less any amount earned in other employment.

(c) Pay clerk Bartosch any amount he incurred for medical or surgical expenses for himself or dependents to the extent that such payments could have been paid by Travelers Insurance Company under Group Policy GA-23000 and in the event of the death of claimant, pay his estate the amount of life insurance provided for under said policy. In addition, reimburse him for premium payments he may have made in the purchase of suitable health, welfare and life insurance.

(d) Pay clerk Bartosch interest at the rate of 10% compounded annually on the anniversary of this claim for amounts due under Item (b) above.

OPINION OF BOARD: Claimant was regularly assigned to Train Clerk Position No. 74 in the yard office of Carrier's Lindenwood Yard at St. Louis, Mo., with assigned hours 11:00 P.M. to 7:00 A.M., Thursday through Monday.

On the night of February 23, 1978, claimant had been used on at least two occasions to transport train crews within the Terminal. At about 3:20 A.M., February 23, he was instructed by the Superintendent to transport a train crew from Lindenwood to St. Clair, a distance of about fifty miles. Claimant did not comply with the instructions. He was charged with refusing to comply with instructions given him by the Superintendent, and investigation scheduled for 2:00 P.M., February 27, 1978. The investigation was conducted as scheduled. The Superintendent testified in the investigation that the reason given by claimant for not complying with his instructions was that claimant did not have a chauffeur's license, and the weather conditions that night. The crew was then transported by a woman clerk, who encountered no difficulties.

There was also introduced into the investigation a statement signed by Raymond F. Brockmeier, who was a brakeman on the crew that was to be transported from Lindenwood to St. Clair, and who was present at the investigation. The statement reads:

"St. Louis, February 23, 1978

"Statement of Fact:

"At approximately 3:20 a.m., February 23, 1978, Superintendent J. K. Vaden and myself were in the Trainmaster's office at Lindenwood Yard Office. Clerk Robyn Bartosch walked out of the east door of the yard office and Mr. Vaden went out this same door to talk to him. He and Mr. Vaden came back into the yard office and a discussion took place between Mr. Vaden and Mr. Bartosch of which I overheard the entire conversation.

"Mr. Vaden instructed Robyn Bartosch to haul a deadhead crew to St. Clair (I was a member of this deadhead crew) to get Train 30 whose crew had hoglaved on the main track. At this time, Mr. Bartosch stated he would not haul the crew to St. Clair because he did not have a chauffeur's (sic) license.

"Mr. Vaden then asked Mr. Bartosch if he was refusing to comply with his instructions. At this point Mr. Bartosch asked Mr. Vaden for a written message of these instructions. Mr. Vaden wrote a message of these instructions to Mr. Bartosch instructing him to haul this crew to St. Clair.

"Mr. Bartosch then stated he also wanted on this message a statement relieving him of all liability in case of any accident or injury to any crew member. Mr. Vaden then told Mr. Bartosch he was again instructing him to get in the truck and haul this deadhead crew to St. Clair. He advised him he had two choices: Comply with his instructions or refuse to comply with these instructions. Mr. Bartosch then replied, 'Under these circumstances, I refuse.'

"At this point, Mr. Vaden told Mr. Bartosch he was to be held out of service, pending investigation.

"/s/ Raymond F. Brockmeier
(Signature & Occupation)

"/s/ J. Salsman
(Witness)

9:40 a.m. 2-23-78
(Time & Date) "

On February 28, 1978, claimant was notified of his dismissal from service as result of the investigation conducted on February 27.

In the subsequent handling of the dispute on the property, the Carrier's Assistant General Manager advised the District General Chairman that it was not the policy of the Carrier that chauffeurs' licenses be required of employees transporting crews in Company vehicles. In its submission to the Board the Carrier states that clerical employees have been used to transport crews on the Carrier's system for many years without chauffeurs' licenses, and without protest from the Organization.

It is well settled that employees must comply with instructions of superior officers and then complain later if they think they have been mistreated, except where a real safety hazard may be involved. If an employee contends that a safety hazard is involved, there must be proof of such condition. No such proof is present here. The fact remains that a woman clerk transported the crew and encountered no difficulty.

Based upon the entire record, it is the conclusion of the Board that claimant was subject to discipline for his actions. The record shows that on April 1, 1978, Carrier offered to restore claimant to service on a leniency basis, which he declined to accept. On June 2, 1978, the Assistant General Manager wrote the District General Chairman, confirming conference on May 30, 1978, in which he stated:

"We were unable to reach an understanding regarding this discipline case. I will repeat the offer I made to you in conference, i.e., to reinstate Mr. Bartosch with vacation and seniority rights unimpaired with the understanding that you may handle further the matter of pay for time lost."

Such offer was subsequently reiterated on a number of occasions, and declined by the claimant.

It is the Board's view that claimant acted ill-advisedly in declining the Carrier's offer of May 30, 1978, as set forth in letter of June 2, 1978. The offer, if accepted, would have refuted any implication of guilt arising from a leniency reinstatement. The claimant had an obligation to mitigate damages. Any loss suffered by claimant subsequent to the May 30 offer, confirmed on June 2, 1978, was of his own volition.

We will reduce the discipline imposed from dismissal to disciplinary suspension from date claimant was withheld from service, February 23, 1978, to and including June 2, 1978, and award that claimant be restored to service with seniority and vacation rights unimpaired. In all other respects the 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 Employee involved in this dispute are respectively Carrier and Employee 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 discipline imposed was excessive.

A W A R D

Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1979.