

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22596  
Docket Number CL-22524

George S. Roukis, 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-8604) that:

1. The Carrier violated the currently controlling and effective Agreement between the parties to this dispute when on July 26, 1977, the Superintendent imposed the extreme penalty of dismissal on the person of Assistant Chief Clerk Alexa A. Woods.

2. The Carrier violated the currently controlling and effective Agreement between the parties to this dispute when during the investigation held on July 19, 1977, the Superintendent of Northern Terminals, Mr. F. Bealer, informed Claimant she was being withheld from service pending results of the investigation.

3. Effective March 2, 1978, Carrier returned Claimant to service without prejudice to the claim of the Brotherhood. Claim is thus for all compensation lost beginning July 19, 1977 and continuing until the date she actually returned to service, or March 2, 1978.

OPINION OF BOARD: An investigative hearing was held on July 19, 1977 to determine whether claimant was insubordinate when she allegedly refused to follow her supervisor's instructions to handle paychecks on the night of July 14, 1977 in apparent violation of General Rules A & B, Rules 700, 701, 702 and 702(B) of Rules Governing Duties and Deportment of Employes, Safety Instructions and Use of Radio, Form 7908 effective October 1, 1974.

Claimant was subsequently found guilty of the asserted charges and dismissed from service on July 26, 1977. This disposition was then appealed on the property pursuant to Agreement Rule 45 and at a proposed settlement conference held in Salt Lake City, Utah on January 23, 1978, Carrier noted its amenability to restoring claimant to her position but without back pay for time lost.

Predicated upon this understanding claimant was returned to service with the back pay portion of the claim still remaining unresolved. This issue is presently before us.

In our review of the case, we agree with claimant that Carrier technically, albeit nonwilfully violated Rule 45(a) when it didn't observe properly the explicit requirements regarding appropriate suspension notice pending a hearing which shall be held in seven (7) days. Waiting until the hearing to apprise her officially that she was suspended didn't cure this oversight.

On the other hand, we agree with Carrier, that the record clearly supports the charges that claimant was insubordinate when she refused to take responsibility for handing out paychecks on July 14, 1977.

The pattern of events and the specific deployment and availability of supportive clerical personnel did not create an untenable situation that warranted her action.

Under the specific circumstances of that incident, claimant was duty bound to obey diligently Carrier's supervisory directives. Her refusal was plainly impermissible.

In Public Law Board 117, Award 3, a nationally distinguished railroad arbitrator cogently articulated a principle that succinctly expresses the obey now, grieve later rule. He stated:

"Unless the instructions given the claimant by Carrier supervisors put him in imminent danger of life or limb, or were clearly and manifestly violative of public morals and law, the claimant was contractually obligated by virtue of the employer-employee relationship to comply with Carrier instructions."

We believe this principle is directly on point with the fact specifics herein given the absence of these definable exceptions.

Accordingly, inasmuch as we find claimant guilty of the charges of insubordination we feel that the de facto penalty of suspension without back pay should not have exceeded three (3) months

when measured against the pertinent background circumstances vis her reinstatement and her past employment record. We will, thus, order that she be paid back pay for all time lost subsequent to October 26, 1977 and the week she was improperly suspended, July 19, 1977 through July 26, 1977.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 to the extent expressed in the Opinion.

A W A R D

Claim sustained as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1979.