

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22624
Docket Number CL-22301

James F. Searce, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8483) that:

1. Carrier violated the Agreement at Atlanta, Georgia, June 10, 1976, when it removed Ms. Gail P. Davenport from service for an alleged act of insubordination and threat of physical violence against Supervisor Jean Childs at/or about 2:15 a.m., June 9, 1976.

2. For this violation, Carrier shall be required to compensate Claimant Gail P. Davenport for all time lost from June 10, 1976 through August 8, 1976, at her daily rate of pay.

OPINION OF BOARD: The Claimant was dismissed from service on charges of insubordination and a threat of physical violence over an incident which occurred shortly after 2:00 a.m. on June 9, 1976. Subsequent review of the case resulted in a reduction of discipline to sixty (60) days suspension without pay. The Organization contends the discipline is out of proportion to the Claimant's fault, if any, in this case; the Carrier considers its reduction of discipline to sixty days as sufficient show of leniency.

The Claimant was working the third shift (11:00 p.m. to 7:00 a.m.) as a "Data Processing Typist" when, about 2:00 a.m., she became ill. She went to her supervisor's desk for the purpose of securing approval to go home. The supervisor was preoccupied with other employes under her supervision. A supervisor from another area noted the Claimant's apparent ill health and proceeded to execute paperwork necessary for her release. The Claimant's supervisor, observing the two at her desk came to that spot and inquired as to the problem. The Claimant apparently did not respond to her satisfaction. In any case, the paperwork necessary to release the Claimant was prepared and she turned to leave. The Supervisor heard

her say something involving the words "make her sick." She pressed the Claimant for a reiteration of her precise statement; the Claimant disdained to answer but, according to the supervisor said to come outside and she would "show her what she said." More words were exchanged, whereupon the Claimant advised her supervisor to leave her alone or she would "knock her out of the window." The supervisor followed her to the elevator, more words passing between them, and the Claimant thereafter left. The supervisor removed the Claimant subject to a hearing. Post the hearing, her removal was reduced to a sixty-day suspension.

A review of the record suggests that this incident was the result of less than complete prudence and good judgment by both the Claimant and her supervisor. The Claimant admits uttering the inappropriate reference to knocking her supervisor out of the window, but a sufficient showing was made that the supervisor contributed to the tension by her own actions prior to such a statement. Nonetheless, the Claimant's own actions are not without fault. We shall reduce the disciplinary action to 30 days.

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;

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

The Agreement was violated to the extent that discipline was excessive.

A W A R D

Claim is affirmed to the extent that the Claimant shall be awarded pay for half of the time held out of service due to this disciplinary action.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1979.