

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22795
Docket Number CL-22858

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8825)
that:

(1) Carrier violated the rules of the current Rules Agreement between the parties (DP-45) including but not limited to Rules 26, 27, 28, 30 and 33, when on March 20, 1978 it suspended Ms. G. F. Lindsey, Swing Clerk, General Office, Denison, Texas, for sixty (60) days for allegedly having an unsatisfactory production record and violating Rule 6 of Carrier's Accounting Department Rules and Regulations.

(2) Carrier further violated those same Rules when by letter dated March 30, 1978, Carrier's Auditor-Revenue Mr. J. C. LaGrone removed Claimant from Carrier's service, while she was on suspension for allegedly destroying a file in violation of Carrier's General Rule "D" of Circular DP-2 and Rule 12 of the Accounting Department Rules and Regulations.

(3) Carrier shall reinstate Claimant to its service with her seniority, vacation, insurance and all other employee rights restored unimpaired, her record cleared of these charges and compensate her for all time lost commencing with March 21, 1978, account of the Carrier suspending and the dismissing of Claimant from its service without just cause or giving a precise reason of violation of current agreement DP-451.

OPINION OF BOARD: Claimant, who had been employed in Carrier's Accounting Department about ten years, was the occupant of Swing Clerk Position No. 48, Data Control Bureau, Revenue Division, in the general offices of the Carrier at Denison, Texas.

On March 20, 1978, claimant was notified by the Auditor-Revenue that she was suspended from service for a sixty-day period for unsatisfactory work performance and violation of Rule 6 of Carrier's Account Department Rules and Regulations, which, together with a previously imposed five-day deferred suspension, made a total of sixty five days.

On March 30, 1978, while on suspension, claimant was advised by the Auditor-Revenue that she was removed from the service for alleged violation of Carrier's General Rule D of Circular DP-2, and Rule 12 of the Accounting Department Rules and Regulations.

The rules and regulations referred to in the letters of March 20 and 28, 1978, are quoted in the record and will not be repeated here.

On March 31, 1978, claimant requested an investigation in accordance with Rule 27 of the applicable Agreement. The investigation was conducted April 12 through April 14, 1978, and on April 21, 1978, claimant was advised that the discipline previously administered in the letters of March 20 and March 30, 1978, was reaffirmed.

A copy of the transcript of the rather lengthy investigation has been made a part of the record. On review of the transcript, the Board is of the opinion that considerable unnecessary rhetoric was engaged in. However, we find that none of claimant's substantive procedural rights was violated.

There was substantial evidence adduced at the investigation to support disciplinary action against the claimant. However, based upon the entire record, the Board finds that permanent dismissal was overly severe. We will award that claimant be restored to the service with seniority and other rights unimpaired, but without any compensation for time lost while out of the service.

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

That the discipline imposed was excessive.

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Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A. W. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1980.