

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22814
Docket Number CL-22853

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-8796)
that:

(1) Carrier violated the Rules of the current Agreement between the parties (DP-451) including but not limited to Rules 26 and 35 (b) when it dismissed Mr. S. L. Thies, Chief Clerk-Grain Position, Marketing Department, St. Louis, Mo., from its service effective 5:00 p.m., February 14, 1978.

(2) Carrier shall reinstate Mr. S. L. Thies to its service with his seniority, vacation, insurance and all other employee rights restored, unimpaired and clear his personal records of these charges and shall compensate him for all time lost, including overtime he could have worked in line with his seniority and allow interest on all monies due.

OPINION OF BOARD: Claimant was the occupant of Chief Clerk-Grain Position, Marketing Department, St. Louis, Missouri, with assigned hours 8:15 A.M. to 5:00 P.M., forty-five minute meal period, Monday through Friday.

By letter dated February 14, 1978, he was advised that he was dismissed from the service of the Carrier. The letter of dismissal read:

"Mr. J. A. Beekman, Chief Clerk, General Freight Office, St. Louis, Mo., informed me he contacted you in the General Freight Office on February 13, 1978, at approximately 9:30 A.M., while you were discussing non-railroad topics with Mr. George Hix, Assistant Correspondence Clerk, and requested you to stop talking, at which point you turned to Mr. Beekman and said, 'Boy, there is something wrong with you. I don't understand why you are so afraid of Tom Steiniger,' and returned to your desk, shaking your head in a manner suggesting disgust, and further stating in a loud voice, 'Quit staring at me so much.' Mr. Beekman then told you, 'If you were working all the time I wouldn't have to stare at you.'

"The statement made by you was repeated three times following the first statement and in each case Mr. Beekman informed you that had you been working, no cause would have arisen for the staring.

At the time the statements were made by you, there were present in the office other clerks and also Mr. H. A. Woodbury, Rate Manager, Marketing Department.

This incident is in direct violation of Circular No. DP-2, Missouri-Kansas-Texas Railroad Company General Rules Governing Conduct of Employees in all Departments and Company Policy on Assessment of Discipline (Reissued January 1, 1975), Paragraphs --

- A. 'Employees must *** devote themselves exclusively to their duties ***.'
- C. 'Courteous deportment is required of all employees in their dealings with *** their superiors *** and each other.'
- D. 'Employees must not be:
 - (3) Insubordinate.
 - (6) Quarrelsome or otherwise vicious.'

This is not the first time you have been cited for improper conduct and other violations of company rules. For your ready reference, I attach copies of letters dated December 3, 1976 citing an incident of physical attack upon a co-worker, for which you were suspended for a period of ten working days; May 13, 1976 citing you for action contrary to good discipline pertaining to remarks made by you to a company official; and a note from you dated August 5, 1974 protesting a diversion from your then present position as Chief Clerk-WTL, General Freight Office, to assume duties of the Southwestern Lines Rate and Route Check position at the Southwestern Freight Bureau.

For your violation of rules as cited above and because of your previous disciplinary record, you are hereby dismissed from the service of the Missouri-Kansas-Texas Railroad as of 5:00 P.M. today, February 14, 1978.

Please acknowledge receipt on enclosed copy of this letter."

In accordance with the provisions of the applicable Agreement, claimant requested an investigation, which was scheduled for March 9, 1978, and postponed to March 21, 1978. A copy of the transcript of the investigation has been made a part of the record.

The Board agrees with the contention of the Organization that the matter of claimant protesting the diversion from his position to another position in 1974 was not a matter subject to discipline and was improperly referred to in the letter of dismissal. However, we do not consider this of sufficient significance to void the entire proceedings.

In disciplinary proceedings the burden of proof is on the Carrier to support the charge against the employee. In the investigation conducted on March 21, 1978, the Chief Clerk of the General Freight Office, Mr. Beekman testified along the lines outlined in the letter of dismissal. In the claimant's testimony he acknowledged that the Chief Clerk instructed him to return to his desk while he was conversing with another clerk, and after returning to his desk there was an exchange of words with the Chief Clerk. Another witness testified that the exchange of words between the claimant and the Chief Clerk was above the normal tone of conversation.

Based upon the entire record before it, the Board concludes that discipline was warranted. However, in our opinion 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 Carrier's 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 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 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. Paulos*
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1980.

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