

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22934
Docket Number CL-23091

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8921) that:

1. Carrier violated the agreement rules, particularly Rule 21, when under date of October 20, 1978 it issued two (2) notices wherein it dismissed Ms. Lee Names from service of the Carrier account of two (2) investigations held on October 16, 1978.

2. Carrier shall now be required to reinstate Ms. Lee Names with all rights unimpaired, and make her whole for all losses from October 20, 1978 forward, including any monies expended which would have been covered under Travelers Group Policy GA-23000 and Aetna Group Policy GP-12000.

OPINION OF BOARD: Claimant had been in Carrier's service about nineteen and one-half years. She was employed as a steno-clerk in Carrier's Real Estate and Industrial Development Department. The record shows that on October 9, 1978, claimant entered the office of her immediate supervisor, Mr. Kennerly, and complained that he had given her "over-load" work from another steno-clerk. It appears that a rather heated discussion developed, with Mr. Kennerly asking claimant twice to do the work, and claimant stating that Mr. Kennerly was not her supervisor and leaving the office.

Following the incident in Mr. Kennerly's office, claimant was instructed to report to the office of the Assistant Vice President - Real Estate, Mr. R. W. Mickey. Claimant refused to report to Mr. Mickey's office without her union representative present. She subsequently met with Messrs. Kennerly and Mickey, in the company of the Division Chairman. The Carrier states that the purpose of the meeting was to clarify the fact that Mr. Kennerly was claimant's direct supervisor.

On October 9, 1978, claimant was notified to attend a formal investigation on the following charge:

"Your responsibility for insubordination when on October 9, 1978, you:

- (1) Refused to obey an order from Mr. Kennerley, Manager of Title and Closing, at or about 9:00 A.M. on that date to perform certain typing work;
- (2) Refused to obey an order from Mr. Mickey, Assistant Vice President-Real Estate and Industrial Development, at or about 10:00 A.M. on that date to report to his office immediately for the purpose of securing facts and your version of Mr. Kennerley's instructions to perform such typing work;
- (3) Refused to obey an order from Mr. Mickey at or about 10:10 A.M. on that date to again report to his office for the purpose of securing facts in connection with your declining to perform such typing work."

Hearing on the above charge was conducted on October 16, 1978, following which claimant was dismissed from the service.

On October 9, 1978, the Assistant Vice President-Real Estate, upon the recommendation of Dr. William B. Clark, Assistant Vice President-Personnel Development (who holds a Ph. D. in psychology and is a registered psychologist in the State of Illinois), instructed claimant to report to the office of Dr. Arieff at 3:00 P.M., on October 12, 1978, for a psychiatric evaluation, arrangements having been made for the appointment. Claimant responded that she considered the request improper and requested that the appointment with the doctor be cancelled. On October 11, 1978, claimant was again instructed by the Assistant Vice President-Real Estate, in writing, to report for the examination, as previously instructed. Claimant did not report for the examination as instructed, and was subsequently directed to report for a formal investigation on the following charge:

"Your responsibility for your failure to report for medical examination on October 12, 1978, as instructed by letters from Mr. Mickey dated October 9 and October 11, 1978."

A hearing on this charge was held on October 16, 1978, following which claimant was notified of her dismissal from the service.

The Board has carefully reviewed the transcript of each investigation, and we are compelled to the conclusion that there was substantial evidence in support of the charges in each case. It was the claimant's obligation to comply with the instructions of her superior officers in each case. If she considered that her Agreement rights were being violated or that she was being mistreated, her recourse was to comply with the instructions and then handle through the grievance procedure. Her actions in each case were, to say the least, ill-advised.

While disciplinary action was warranted, the Board is of the opinion, under all the circumstances and considering claimant's length of service, that permanent dismissal was excessive. We will award that claimant be restored to service with seniority and other rights unimpaired, but without any compensation for time lost while out of service, provided that she satisfactorily passes examinations, physical or psychiatric, that may be required by the Carrier.

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.

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 30th day of July 1980.