

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23025
Docket Number CL-23063

Paul C. Carter, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8910) that:

- 1) The Company violated the Agreement when it used unjust and too severe punishment against Ms. Parr and dismissed her from the service of the Company.
- 2) The Company shall now be required to reinstate Ms. Parr in her former position without loss of seniority and with full pay for all days lost.

OPINION OF BOARD: It seems clear from the record that on September 5, 1978, claimant was scheduled to work the 7:00 A.M., janitor's position. She did not report at the starting time of the assignment. Another clerk was called to work the position.

On September 6, 1978, claimant was called into the office of her supervisor to sign for thirty demerits. Immediately after she signed for the demerits, claimant was told that she could either resign or a formal investigation would be held. Formal investigation was held on September 13, 1978, on the following:

"...to determine facts and place responsibility, if any, in connection with your habitual failure to report for duty at the prescribed time and place and absenting yourself from duty without proper authority, the most recent case being your alleged failure to report for duty as Janitor at 7:00 A.M., September 5, 1978, and absenting yourself from duty without proper authority on that date."

On September 21, 1978, claimant was notified:

"As a result of Formal Investigation held in Conference Room, Utility Building, Grand Junction, Colorado, at 10:00 A.M., September 13, 1978, to determine facts and place responsibility, if any, in connection with your habitual failure to report for duty at the prescribed time and place and absenting yourself from duty without proper authority, the most recent case being your alleged failure to report for duty as Janitor at 7:00 A.M., September 5, 1978, and absenting yourself from duty without proper authority on that date, effective this date your personal record is being assessed with Thirty Demerits for your responsibility therewith.

"The assessment of this discipline gives you an accumulation of 100 demerits standing against your record and you are, therefore, dismissed from the service on this account."

In its submission to this Board, the Carrier states:

"The Organization is well aware that the dismissal account the accumulation of ninety (90) or more demerits will cause discharge from the service under the discipline by record System in effect on this property was not discipline assessed account the investigation or charge. Instead, the dismissal was required when ninety or more demerits were accumulated on Ms. Parr's record."

It is the view of this Board that the manner in which the demerit issue was handled on September 6, 1978, as brought out in the investigation, leaves much to be desired. In Award 20937 this Board held:

"Basic fairness and justice requires Carrier to advise an employee who waives investigation and accepts discipline, when the waiver and acceptance will give him a total number of demerits over the maximum permitted by the Brown System, that by so doing he is thereby assenting to dismissal. The notice must be clear and specific."

X-1
See also Second Division Award No. 6922.

X-2
The record does not show that claimant was given any notice whatsoever prior to signing for the thirty demerits on September 6, 1978.

The record does show, however, that claimant's prior work record was less than satisfactory, and there is no question that she failed to protect her assignment on September 5, 1978. Discipline was warranted, but, under the facts of record, we consider permanent dismissal 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.

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:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 28th day of October 1980.