

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23096
Docket Number CL-23132

A. Robert Lowry, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Southern Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8906)
that:

Carrier violated the Agreement at Birmingham, Alabama when on April 4, 1978 it unjustly dismissed Miss J. V. Wigglesworth, Extra Board Clerk, Norris Yard, Birmingham, Alabama, from service account allegedly vacating her assignment as LDX Clerk on March 31, 1978 approximately 40 minutes prior to the scheduled off time of 11 PM and without proper authority.

For this violation, Carrier should be required to restore Miss J. V. Wigglesworth to service with all rights unimpaired and compensate her for all time lost from March 31, 1978 and continuing until such restoration is accomplished.

OPINION OF BOARD: Miss J. V. Wigglesworth, the Claimant, was employed as a yard clerk for the Carrier on its extra board in its Norris Yard in Birmingham, Alabama on March 31, 1978. By letter of April 4, 1978 the Carrier dismissed Claimant for leaving her assignment of LDX Clerk at approximately 10:20 P.M. on March 31, 1978 without proper authority from Chief Yard Clerk and after having been instructed by him to remain at Norris Yard until arrival of Assistant Agent Terminal Control.

Claimant requested and received an investigation as prescribed in Rule C-1 of the Agreement. Investigation was held on April 14, 1978, where Claimant was represented by her duly accredited representative. Copy of the transcript of the investigation was made a part of the record. A careful reading of the transcript reveals Claimant was given a fair and impartial hearing.

On March 31, 1978 Claimant was assigned as an extra board employee to work the first trick LDX Clerk position at Norris Yard with hours 7:00 A.M. to 3:00 P.M. Prior to the end of the first trick she was informed that because the second trick LDX Clerk failed to appear she would be required to "double" and continue working through on the second trick, 3:00 P.M. to 11:00 P.M. This is not an uncommon practice in the railroad industry.

Some time prior to 10:20 P.M. the record shows that Claimant and the Chief Yard Clerk had some conversation concerning the availability of "headers", which apparently were to have been provided by the Claimant. During this conversation the Chief Yard Clerk informed Claimant that she was playing games with the "headers" and that she would get hurt if she continued. (Claimant testified that she had interpreted this to mean she would be physically hurt by the Chief Yard Clerk. The Board discounts this as the statement was meant as a warning Claimant would be subjecting herself to discipline.) As a result of this conversation the Chief Yard Clerk called his supervisor, the Assistant Agent Terminal Control, and requested his presence to assist in handling this problem with the Claimant. Subsequent to this conversation Claimant requested assistance from the Chief Yard Clerk but he advised her he was busy and could not help her at that time. At 10:20 P.M. Claimant told the Chief Yard Clerk to mark her off as she was going home since she could not get any assistance. The Chief Yard Clerk instructed her to remain on the job until the Assistant Agent Terminal Control arrived. Claimant refused and walked off the job.

Claimant contended in the investigation that she was sick and had told the Chief Yard Clerk that she was sick and wanted to be marked off so she could go home. The Chief Yard Clerk denied this and testified that had she informed him she was ill there would have been no question about releasing her to go home. No witnesses testified that they heard Claimant tell the Chief of her condition.

The evidence developed in the investigation supports the Carrier's charges. The Board must now determine if the punishment fits the offense or if the discipline was excessive.

The record shows Claimant was on duty continuously for 15 hours and 20 minutes and apparently the duties of the position were confining requiring her full attention even to the extent of foregoing her 20 minute meal period during the second trick, all of which could have had an affect on the nervous condition and, as a result, her attitude. For these reasons the Board is of the opinion the punishment was excessive, and we award reinstatement with full seniority and all other rights unimpaired. However, her personal record, which was included in the record, shows a poor history of discipline and for this reason the Board includes the "without back pay" penalty. This Award should also be made a part of her personal record.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

Award Number 23096
Docket Number CL-23132

Page 3

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

That the discipline was excessive.

A W A R D

Claim sustained to the extent and in the manner set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1980.