

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24122
Docket Number CL-24194

Edward L. Suntrup, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Staten Island Rapid Transit Operating Authority

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9452)
that:

1. The Carrier violated the established practices and rules of the Brotherhood, when they dismissed Mary Lou MacStoker for an alleged act of insubordination.
2. The Carrier will reinstate Mary Lou MacStoker and pay her for all time lost, commencing August 15, 1980 and continuing until the violation is corrected.
3. The Carrier will also make claimant "whole" for vacation, seniority, and any medical bills incurred during the above suspension.

OPINION OF BOARD: Claimant entered service of Carrier on December 12, 1979 as a stenographic clerk, Position No. 81-B-103. The job description of this position includes, among other things, the following: "... (job) incumbent may be required to take down and to transcribe meetings, investigations, and hearings, in whole or in part ..." (Bulletin No. 71). The traditional manner of fulfilling this function is by means of direct typing of transcripts so that both Carrier and Organization may readily refer to the transcript during a hearing itself. On July 25, 1980 Claimant was notified to appear at Carrier's Administrative Offices on July 31, 1980 for an investigation hearing. Claimant was charged with insubordination since she allegedly refused a direct order to fulfill the job function noted above in the traditional manner, advising her superior (E. J. Cummings, Sr., Assistant Superintendent Operating and Maintenance) that she would, instead, take dictation of a hearing which was to have taken place on July 25, 1980, in shorthand. After postponement, the investigation into this incident, in accordance with Rule 47 of the Agreement between the parties, took place on August 1, 1980 and was continued on August 6, 1980. On August 15, 1980 Claimant was advised by Carrier that she had been found guilty as charged and was dismissed from service.

An analysis of the investigative hearing which took place on August 1 and 6, 1980 indicates that Claimant was aware that typing of hearings was an integral part of her job responsibilities and that she offered no medical evidence prior to taking this job nor in the investigation itself to show that she was physically incapable of performing this task. Her decision not to perform this part of her job falls, in the mind of the Board, under the title of an arbitrary and voluntary act. The Board will not move, therefore, that the disciplinary action of the Carrier be disturbed since the Board, in this case,

finds insufficient substantial evidence that the Agreement between the parties was in any way violated.

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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of January 1983.

