

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24408
Docket Number CL-24474

William G. Caples, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9545) that:

1. The Western Pacific Railroad Company violated the Rules of Clerks Agreement when it arbitrarily and capriciously removed Ms. Pauline Lewis from service January 13, 1981, on inadequate charges that were unproven and failed to return her to service until February 23, 1981.

(2) The Western Pacific Railroad shall now be required to compensate Ms. Pauline Lewis for all time lost from and including January 13, until and including February 23, 1981.

OPINION OF BOARD: On January 13, 1981, Claimant, a Guaranteed Extra Board Clerk, in the Operating Department, of the Carrier's San Francisco General Office as a result of an incident occurring that day was served a Notice of Formal Investigation on January 14, 1981, which stated as its purpose:

"...to ascertain facts and place your responsibility, if any, for your alleged insubordinate behavior to J. W. Long, General Supervisor-Demurrage at 8:00 A.M., Tuesday, January 13, 1981, and also for your alleged unauthorized absence on January 13, 1981...."

As a result of the investigation the Director-Operating Administration found he could "only conclude the charges of insubordination to Mr. Long and your unauthorized absence were substantiated by the bulk of the testimony" and dismissed Claimant from service. Thereafter, a claim was filed on Claimant's behalf for her restoration to service and payment of lost wages. On February 23, 1981 Claimant was restored to service with seniority rights unimpaired without prejudice to her right to pursue the claim for lost wages.

Before we speak to the substantive issues left to our jurisdiction we must speak to the procedural issues raised by the Organization, that the charges were multiple, no proof of violation (or rules). We have carefully reviewed the complete record and although it is shown some discipline other than discharge is warranted we find no violation of procedural rights.

The question thus left for determination is whether the discipline is unjust or excessive. In this instance the Board finds that the discipline was excessive. The discipline shall be reduced to 10 working days and she shall be compensated for all time lost in excess of the 10 working days at her regular rate up to February 23, 1981, when she returned to work.

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 Agreement was violated.

A W A R D

Claim sustained in accordance with the Opinion.

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 15th day of June 1983.

Rec'd
9-7-83