

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24605
Docket Number CL-24851

Paul C. Carter, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9688) that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Richmond, California, when it removed Ms. J. M. Sweatt from service as a result of a formal investigation held September 18, 1981, and

(b) Ms. Sweatt shall be returned to service and paid for loss of wages and benefits commencing on or about September 12, 1981.

OPINION OF BOARD: Claimant, with a seniority date of May 12, 1980, was assigned to Zoned Extra Board position at Richmond, California. On September 11, 1981, she was assigned to train with TOFC clerk M. M. Milheiser, with a view to Claimant relieving Ms. Milheiser on the latter's scheduled vacation.

The record shows that an incident occurred between the Claimant and Ms. Milheiser earlier in the day, which resulted in the Claimant being instructed by the Agent in charge to have no further contact with Ms. Milheiser for the remainder of the week, and that Claimant agreed to that arrangement. At about 3:00 P.M. on the same day, clerk Milheiser was pulling out of Santa Fe COFC facility. According to the Carrier, and verified in the investigation later conducted, Claimant was parked across the street and when she observed Ms. Milheiser pulling out of the facility, she made a U-turn on the street and stopped Ms. Milheiser at the entrance to the COFC facility. As a result of the incident that occurred at that time, Claimant and clerk Milheiser were charged on September 12, 1981:

*Richmond, September 12, 1981.

NOTICE OF FORMAL INVESTIGATION

Ms. Marjorie N. Milheiser - TOFC Clerk
Janice M. Sweatt - Extra Board Clerk

You are hereby notified to attend formal investigation at Trainmaster's Office, Richmond, California. Friday, September 18, 1981, 9:30 a.m., concerning report of alleged confrontation between Clerks Marjorie M. Milheiser and Janice M. Sweatt approximately 3 p.m.,

"September 11, 1981, so as to determine facts and place responsibility, if any, involving possible violation of Rules Nos. 1, 2, 7, 14, 16 and 17, of General Rules for the Guidance of Employees, 1978, Form 2626 Std..

You may arrange for representation in line with the provisions of Agreement of Schedule governing your working conditions and you may likewise arrange for the attendance of any desired witnesses.

Please acknowledge receipt of this notice on attached copy and return to this office.

J. M. Martin
Superintendent

cc: Mr. H. W. Perkins."

Both were suspended from the service pending the investigation.

The investigation was conducted as scheduled, following which Claimant was dismissed from the service. A copy of the transcript of the investigation has been made a part of the record. We have carefully reviewed the transcript of the investigation, and find that none of Claimant's substantive procedural rights was violated.

In the course of the investigation it was developed that clerk Milheiser was really frightened when confronted by Claimant as she was attempting to leave the property; and that Claimant made a derogatory remark to her. A Special Agent, who was called to the scene about 3:45 P.M. testified that when he arrived clerk Milheiser was hysterical and crying; that he followed Ms. Milheiser to her residence because she was afraid to go home alone. There was also evidence in the investigation that Claimant had made threatening remarks toward Ms. Milheiser prior to leaving the ramp that day.

The Agent in charge testified that earlier in the day, following the earlier incident, he:

"... instructed Ms. Sweatt (claimant) to go to the TOFC ramp, finish her tour of duty, and, by mutual agreement, she was not to have any further contact with Ms. Milheiser for actually the remainder of that week and at the end of that time Ms. Milheiser would then go on vacation so there would be some period of time to allow things to cool down."

It is quite clear that Claimant did not comply with the instructions and understanding that she had with the Agent. Her statement that:

"... I wanted to tell her (Milheiser) that I only wanted to talk to her that I wanted to apologize. I wanted to ask Micki for forgiveness so that I could go to church and make a confession."

is not persuasive.

Considering Claimant's short service, and the fact that the evidence indicates that she was the aggressor in the 3:00 P.M. incident, we do not find the Carrier's action in imposing the discipline that it did, to be arbitrary, capricious, or in bad faith.

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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 13th day of January 1984.