

The Third Division consisted of the regular members and in addition Referee Barry E. Simon when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-10372) that:

(CARRIER'S FILE NO. TCU-D-2973/TCU FILE NO. 393-E8-559-D)

1. Carrier acted in an arbitrary, capricious and unjust manner when it dismissed from service Ticket Clerk/Operator, Ms. Betty Barnes as a result of an Investigation conducted on October 18, 1988.
2. Carrier shall now be required to reinstate Claimant to service with seniority rights unimpaired, compensate her for all time lost and cleanse from her work record all reference to this matter.
3. Carrier shall compensate Claimant the cost of Medical, Surgical and Dental premiums to the extent that such coverage would be payable by the carrier under existing insurance provisions."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

Carrier received a complaint about Claimant from a passenger who wanted to ship 14 packages from Jacksonville, Florida, where Claimant was employed as Relief Ticket Clerk, Operator/Baggage man. According to this complaint, the passenger, an elderly woman, attempted to deliver the packages to Claimant at approximately 6:00 P.M. She was told by Claimant that the baggage department was closed until 11:00 P.M. and that she should return after that time. The woman, who had hired someone to handle the packages for her, then made arrangements to return later that night. Upon her return at approximately

10:30 P.M., the woman learned that the baggage department is open 24 hours a day. When she questioned Claimant about this, Claimant became angry and began to curse and yell at another baggageman. She then began to throw the passenger's packages at the other employee, within the vision of the passenger.

Upon receipt of this complaint, Claimant was directed to attend a disciplinary Hearing, at which a letter describing these events from the passenger was placed into evidence. Testimony by other employees corroborated the passenger's statements that Claimant threw packages and swore at the other baggageman. Claimant acknowledged that she asked the passenger to return later in the day. Claimant explained that she had previously suffered an injury and was told not to handle heavy packages without assistance. Claimant denied that she cursed or tossed packages at the other employee.

Following the Hearing, Claimant was dismissed from service. Based upon our review of the record, we find that there was substantial evidence to support the Carrier's conclusion that Claimant was guilty of misconduct. Claimant's testimony was contradicted by employees who had no interest in the outcome of her Hearing. Claimant testified that the packages were too heavy for her to throw, although they averaged only 25 pounds. Because some of the boxes were near the 50 pound weight limit, others must have been substantially less than 25 pounds. Claimant's conduct in this case, as well as her previous discipline, supports the action taken by the Carrier. In reaching this conclusion, we have not considered the issuance of "counseling letters" as prior discipline because counseling is not discipline.

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 28th day of August 1990.