

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

**Award No. 32393  
Docket No. MS-32963  
97-3-96-3-375**

**The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.**

**(Lathronea P. Gresham**

**PARTIES TO DISPUTE: (**

**(Norfolk & Western Railway Company**

**STATEMENT OF CLAIM:**

- "1. The Carrier violated the provisions of Rule 27 of the Clerks Master Working Agreement dated April 1, 1973, when as a result of a hearing and investigation to test the following charge, it arbitrarily and capriciously dismissed Clerk L. P. Gresham:**

**'The purpose of this investigation is to develop the facts and place your particular responsibility, if any, in connection with your conduct unbecoming an employee and that you made false and substantiated (sic), and unsubstantiated allegations during an investigation which was conducted on January 29, 1996, the Master Mechanic B. W. Reese falsified the payroll records regarding Mr. R. E. Shockley taking a week of vacation when he had only four days of vacation, showing the extra day as a sick day. Further, you failed to comply with the instructions of Mr. T. A. Heilig as outlined in his letter of February 22, 1996, regarding these allegations. Also, to determine your responsibility, if any, in connection with your insubordination on the afternoon of March 8, 1996, in that you refused to comply with the repeated instructions of Mr. Reese to hang up the phone.'**

- 2. As a result of the Carrier's decision, it shall now be required to :**

- (a) Remove any and all references to the letter of charges from Clerk L. P. Gresham's service record and, in addition, be required to compensate Claimant for all time lost resulting from the unwarranted discipline, and restore all contractual rights and privileges lost, not limited solely to monetary losses, as a result of the unwarranted discipline.
- (b) Reimburse Clerk L. P. Gresham for any amount incurred for medical or surgical expenses for herself and/or dependents to the extent that such payments would have been paid by Metra Health Group Policy No. GA-23000 and, in the event of the death of Ms. L. P. Gresham, pay her estate the amount of life insurance provided for under said policy. In addition, reimburse her for premium payments she may have made in the purchase of substitute health, welfare and life insurance as provided in Article III, of the National Agreement effective June 1, 1991.
- (c) Clerk L. P. Gresham should be reinstated to her former position or a comparable position in accordance with her full seniority rights and she should be compensated for the difference between the amount earned while out of service or while otherwise employed and the amount she would have earned had she not been held out of service."<sup>1</sup>

**FINDINGS:**

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

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<sup>1</sup>The Statement of Claim is from TCU's letter of appeal dated May 15, 1996. This claim incorporates Claimant's appeal in accordance with her request as outlined in her letter of May 23, 1996.

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

### **PROCEDURAL ISSUE**

At the outset, the Carrier raised a procedural objection to the Board proceeding with this case. Specifically, the Carrier maintains that the dispute is not properly before the Board and must be dismissed, because Claimant failed to comply with the mandatory requirements of Section 2, Second and Section 3, First (I), of the Railway Labor Act. The aforementioned sections of the Act require that the parties to a dispute consider, and if possible, resolve the dispute in conference on the property prior to referring the issue to the Board for resolution. The pertinent sections of the Act are as follows:

#### **"Section 2, Second**

All disputes between a carrier or carriers and its or their employees shall be considered, and if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

#### **Section 3, First (I)**

The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate

division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the dispute.”

It is the position of the Carrier that the case was not progressed according to the provisions of the Railway Labor Act cited above. Specifically, it notes that Claimant did not take part in a conference on the property prior to her June 12, 1996 notice to the Board of her intention to file an *ex parte* Submission.

According to the record before the Board, however, the Transportation Communications International Union and the Carrier’s “highest designated officer” discussed this dispute in conference on May 15, 1996. While it is true that Claimant did not take part in that discussion, she was amply represented in such discussion by the Organization. The Railway Labor Act does not prohibit employees from filing *ex parte* Submissions with the National Railroad Adjustment Board. The Carrier cited Third Division Award 20574 in support of its position. By contrast with the present case, however, in that case no conference to discuss the claim had been held on the property prior to the claimant’s Submission to the Board. Accordingly, the Board finds that since the exact claim at issue had been discussed on the property between the Organization and the Carrier on May 15, 1996 it was ripe for submission to the Board on June 12, 1996, whether by the Organization or by the Claimant.

### MERITS

In view of the complex sequence of events, it is useful to review the chronology through which this case progressed prior to its presentation to the Board.

On March 8, 1996, Claimant was assigned to the 8:00 A.M. to 5:00 P.M. Janitor’s position in Carrier’s Mechanical Department, Bluefield, West Virginia. She worked under the direct supervision of Master Mechanic B. W. Reese and Senior General Foreman R. C. Parks. In a letter dated January 3, 1996, Claimant was notified as follows:

“. . . You’re hereby notified to report to the Master Mechanic’s Conference Room, Bluefield, West Virginia, at 9:00 a.m. on Monday, January 8, 1996, for a formal investigation. The purpose of this investigation is to develop the facts and place your particular responsibility, if any, in connection with your excessive absenteeism during

the period of November 19, 1995, through December 29, 1995, failure to properly protect your assignment on December 27, 1995, when you failed to show up for work for the last two hours of your shift after taking six hours of vacation and failure to properly protect your assignment on December 29, 1995, when you called in and said you would be in after you got your son situated. You called at 8:12 a.m., but did not show up until 12:10 p.m., which is excessive. During the aforementioned period, you missed 25.8 per cent of your available work hours. If you desire to have a representative or representatives and or witnesses present as permitted by your working agreement for formal investigation, please arrange for their presence."

Following a postponement due to inclement weather, and at the request of the Claimant, the Hearing was held on January 19, 1996. At the Hearing, Claimant was asked if she desired a representative or representatives (Tp. 2). She replied that she did not. Claimant also testified (Tp. 3) that she had sent the following note, dated January 19, 1996, to her District Chairman:

"To any and all representatives of TCU:

This is to state that I do not wish representation by any of you in my investigation being conducted on 1-19-96 at approximately 10 a.m. and any insistence from any of you to be present will be considered as an invasion of my privacy. Sincerely, L. P. Gresham."

Once that note was read into the record, and Claimant confirmed that she had written it and submitted it to her General Chairman, the Organization representative was excused from the Hearing by the Hearing Officer. As the Hearing progressed, Senior General Foreman R. C. Parks testified that he had been made aware of the absences contained in Claimant's charge letter upon his return from Christmas vacation. He also testified that, when directed to calculate her absentee rate from November 19 through December 29, 1995, he found that her percentage of absenteeism for that period was 25.8 per cent (Tp. 4-5). Those absences included sick leave without pay, personal business time off, and absences without permission. Parks submitted time sheets into evidence to confirm his calculations, each of which Claimant declined to examine (Tp. 6-7). In a subsequent discussion/cross examination, Claimant established that her total hours of absenteeism for the month of November were less than 1½ (Tp. 11-22).

During the course of her examination of Parks, Claimant attempted to enter into the record a letter she had sent to Master Mechanic Reese, with a copy to Parks (Tp. 25-26). The Hearing Officer determined that the letter was not pertinent to the facts of the matter at issue and, over Claimant's strenuous objections, refused to allow its entry into the record.

Parks' testimony was interrupted to provide an opportunity for Master Mechanic Reese to testify (due to a family emergency). During the course of his testimony Reese noted that he had cautioned Claimant regarding her absenteeism the previous June. Reese also stated that Claimant's rate of absenteeism for the months of November and December 1995 was approximately 12 times that of the Territory average (Tp. 44-46). Under cross examination from Claimant, Reese confirmed that he had taken a call from Claimant regarding "getting her son situated" on December 29, 1995. He also stated that he did not give Claimant "permission to come in late" because she was already late to work by the time she called in; further, he had not anticipated that she would arrive at work after noon on that day (Tp. 47-49).

As she continued her questioning of Reese, Claimant alleged that he had been guilty of discrimination regarding which employees he allowed to take vacation days. Specifically, Claimant alleged that Reese had permitted a fellow employee to take a week of vacation when he had only four days of vacation remaining (Tp. 68-69). During the course of his questioning, Reese entered into the record (as Exhibit J) his letter of June 16, 1995, countersigned (with protest concerning the contents therein) by the Claimant, in which he informed Claimant of his concern regarding her absenteeism. Claimant continued her cross examination of Reese, eventually dismissing him with accusations of not being truthful in his responses to her (Tp. 69-79).

Following her release of Senior Mechanic Reese from the Hearing, Claimant resumed questioning Parks (Tp. 79-89). During that questioning, Claimant contended that she had not failed to protect her assignment on December 29, 1995, but Parks commented that being off for 3.17 hours on that day could not be considered "protecting her assignment," whether or not she actually got some of the tasks of her job completed, and that she was expected to be on duty for all eight hours of her shift (Tp. 81-82). As she proceeded with her questioning, Claimant again suggested that the Carrier's application of its Rules was uneven and discriminatory (Tp. 83). After dismissing Parks, subject to recall, Claimant testified on her own behalf (Tp. 89ff.) In her testimony, Claimant admitted arriving late for work on November 22, leaving early on December

1, not reporting for duty on December 6 and 7, not working her full tour of duty on December 15, marking off sick on December 18 and 19, not working December 21, and not working the remainder of December 27 (taken as a vacation day) when she had only six hours of vacation remaining, and coming in late on December 29, 1995. For each of those absences, Claimant contended that she had either called in concerning her absence and received permission, marked off in accordance with procedures established by Carrier, or completed less than her tour of duty with permission (Tp. 90-100). Claimant also acknowledged that she had been counseled concerning her absenteeism in May 1995. She maintained that at the time of her counseling she had advised her Supervisors of her problems with diabetes and hypertension. She also acknowledged that, at the end of her counseling session, Reese had given her a Letter of Reprimand, which she signed as "received" under what Claimant described as "duress" (Tp. 100).

Following her own testimony, Claimant called her husband as a witness (Tp. 103ff.). Claimant's husband testified, in essence, that he had some memory of when Claimant was off from work. He also testified that she often told him that she had called in and/or received permission on those dates in late November and throughout December when she was going to be late or absent from work (Tp. 103-109). Apparently in view of her unfamiliarity with the process of an Investigation, and in an effort to give Claimant as fair a Hearing as possible, Carrier's Hearing Officer gave Claimant considerable freedom to ask leading and directed questions of her husband, notwithstanding the fact that he was her witness and under "direct" rather than "cross" examination (see, for example, Tp. 110-113).

After releasing Claimant's husband, Carrier recalled Parks. During his testimony, Parks denied receiving a call from Claimant requesting time off on December 18 and 19, 1995 (Tp. 121). He also pointed out that on December 6 and 15, 1995 he had not marked Claimant down as having permission to be absent, but had noted only that she was "off sick" (Tp. 122).

During her closing statement, Claimant read into the record the letter to Reese and Parks previously excluded from the record, without interruption by Carrier's Hearing Officer. That letter reads as follows:

"Dear Mr. Parks: There is an old adage that state that figures do not lie and though this is a fact it is also a fact that figures may be used to establish a lie. You have scheduled an investigation to be held on me for

excessive absenteeism during the period November 19th through December 29, 1995, and failure to protect my assignment. Simply stated during the month of November, 1995, I was available for duty for 19 days and was allowed by the company to work only 17 days, then during the month of December, 1995, by permission I worked 13 days out of a total number of 18 available days. By contract we are allowed an average of two days without being considered excessive or otherwise, therefore, there were three additional days that I did not work and of those, two days were due to illness and one day was granted to me to assist the Bluefield Middle School Band on 12-18-95. On each day that I came in late by permission my assigned duties, emphasis added (sic), were performed as indicated by the completed worksheets which were placed in your mailbox at the end of each day. This investigation can only be considered as another means of covert harassment which has been non stop should be since my assignment to this clerical/janitor position, but God is still in control. Very truly yours, Lathronea P. Gresham, carbon copy of Mr. B. W. Reese which was hand delivered 1-19-95."

In addition to the letter, Claimant also made the following statements as part of her closing remarks.

"I should be well aware of all the little, conniving and subtle or covert harassment tactics now by Norfolk Southern supervisors, but I cannot get used to it. I cannot get used to it because of the fact that I have always been taught to treat human beings with respect and with decency and to treat them as you wish to be treated. . . I am upset and it comes out at times and it even makes me angry at times because I know without a doubt that I am being harassed due to the point, or because of the fact that either Mrs. McIntosh is trying to get back to work, into this position, or that because of my lawsuits against this company, that I am being harassed to the point that they wish me to leave."

Following the Investigation, by letter of January 29, 1996, Claimant was informed that she was assessed a 30 day suspension (January 30 to February 29, 1996).

Moreover, in view of the seriousness of Claimant's allegations regarding favoritism and discrimination in her Department, Director Mechanical Maintenance



Heilig conducted an investigation into vacation and sick days granted by Claimant's Department for calendar years 1993 through 1995. A review of those records showed that at no time had the employee cited by Claimant received a sick leave day when he had exhausted all his vacation days in order to extend his vacation. By letter of February 22, 1996 Heilig directed Claimant to provide corroborative evidence to support her allegations of discrimination against Reese. In that same letter Heilig told Claimant that if she were unable to provide such evidence by March 1, 1996, she was to retract her statements in writing.

In a letter dated February 26, 1996 Claimant requested copies of payroll records for the period 1993-1995. Claimant also asserted that she had stated no untruths during the January 19, 1996 Hearing. Finally, Claimant requested an extension of the March 1, 1996 deadline. In his response of March 1, 1996 Heilig stated in pertinent part:

"... In your February 26 letter you do not provide any evidence to substantiate your allegations, but also do not retract your accusations. Rather, you ask for the opportunity to review Company payroll records so that you may attempt to locate evidence supporting your allegations.

While you have not followed my instructions in my letter of February 20, I am concerned after reading your letter that you may not fully understand the issues involved and, for that reason, I am writing you this letter to explain my concerns and offer you one final opportunity to either substantiate or retract your allegations.

First, a review of the January 19 transcript clearly shows that you accused Master Mechanic Reese of falsifying payroll records, not merely that you asked questions about payroll procedures for sick days. Second, you should understand that my concern is with whether you had good cause for your allegations at the time you made them, not whether you may be able to locate some good cause after-the-fact. Third, you should also understand that if you timely and unequivocally retract your allegations, we do not intend to discipline you for making these allegations at the January 19 hearing.

Therefore, I am extending to you the further opportunity to either furnish me with physical or other corroborative evidence that would

**substantiate your charge against Master Mechanic Reese, or unequivocally retract your accusations in writing, by no later than March 8, 1996. Failure to produce either evidence to back up your charge or a written retraction could result in discipline. . . ."**

**Despite the extension, Claimant neither provided evidence of her allegations, nor wrote a letter retracting them. On March 8, 1996 Claimant was removed from service pending Investigation.**

**By letter of March 11, 1996 Claimant was directed to report for an Investigation:**

**" . . . to develop the facts and place your particular responsibility, if any, in connection with your conduct unbecoming an employee in that you made false and unsubstantiated allegations during an investigation, which was conducted on January 19, 1996, that Master Mechanic B. W. Reese falsified the payroll records regarding Mr. R. E. Shockley taking a week of vacation when he had only four days of vacation, showing the extra day as a sick day. Further, you failed to comply with the instructions of Mr. T. A. Heilig, as outlined in his letter of February 22, 1996, regarding these allegations. Also to determine your responsibility, if any, in connection with your insubordination on the afternoon of March 8, 1996, in that you refused to comply with the repeated instructions of Mr. Reese to hang up the phone . . . ."**

**The Notice of Investigation was sent by Carrier via Certified Mail and Airborne Express. Moreover, Carrier attempted to hand-deliver a third copy of the letter via NS Special Officer Paxton. The letter was refused on all three occasions, the third time apparently by Claimant's husband, who told Carrier's Officer that he had instructions from his wife not to accept anything from the Carrier.**

**The Hearing was commenced on March 14, 1996. Claimant was not present at the Hearing. A TCU representative was in attendance, but not at the behest of Claimant. Following a brief recess to await Claimant's arrival, and a discussion regarding the hospitalization of Claimant, the Hearing was recessed. In between the recess and reconvening of the Hearing, Carrier received notification that Claimant was in the hospital and would be off work for three weeks. The Hearing was reconvened on April**

3, 1996. At that Hearing the following letter from Claimant, which had been faxed to Carrier on March 27, 1996, was read into the record by Parks:

**"This is in reference to investigation which is scheduled April 3, 1996, at 10 a.m. at the Holiday Inn Board Room, Bluefield, West Virginia. First of all, I state that this investigation has to be another means of harassment since at no time did I charge B. W. Reese with the padding of the payroll. Also, insubordination seems to be a term that he used rather loosely with NS officials. When anyone rudely interjects a command such as hang up the phone after that individual has marked off sick is not insubordination; however, if that is your grounds for yet another kangaroo court session, then so be it. However, will you please provide me as soon as possible the daily log sheets beginning 1993 through current and/or the payroll records as previously requested. If this information cannot be provided to me by Friday, March 29, 1996, and/or April 1, 1996, then as my own representative I would request that this investigation be postponed until a mutually acceptable date. This investigation is unwarranted and thus unfair, however, to deny me access to information which will substantiate a belief and to continuously demand such evidence is seemingly a vicious circle because either you do or you do not want substantiating evidence. Respectfully submitted, L. P. Gresham." (Tp. 6, S. 54)<sup>2</sup>**

Carrier's March 28, 1996 response to Claimant was also read into the record. (Tp.8, A. 80) In that letter Carrier restated the basis of the charges against Claimant, and declined Claimant's request for a further adjournment of the Hearing. In addition, a lengthy affidavit from Claimant was read into the record. In that affidavit, Claimant once again denied that she had accused her Supervisor of padding the payroll, and stated that she had neither failed to comply with an instruction from any Supervisor, nor been insubordinate. (Tp. 11-16, S. 90, S. 98)

The following letter from TCU District Chairman S. Wiley, dated March 28, 1996, was also read into the record:

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<sup>2</sup>Quotations from the April 3, 1996 Hearing are noted with page and statement (or answer) number, to distinguish them from the previous Hearing.

**“Dear Mrs. Gresham: In regards to the formal investigation scheduled for 10 a.m., Monday, April 1, 1996, at the Holiday Inn Board Room, Bluefield, West Virginia, copy of notice attached, please advise me if you wish me, as the elective District Chairman of Lodge 619, to assist you at your hearing. My home phone number is Area Code [XXX-XXX-XXXX]. Please call me if you wish me to attend this hearing. Very truly yours, Mark S. Wiley, District Chairman.” (Tp. 17, S. 114) (Phone number redacted by the Board).**

After he read that letter into the record, Wiley requested that the Hearing be adjourned. He acknowledged that he had had no correspondence from Claimant, and admitted that it was apparent she again wished to be her own representative. Carrier noted that according to Claimant’s own letter, she was released for work by her physician prior to the Hearing, and therefore could have been expected to be present. Carrier denied Wiley’s request for a cancellation or postponement and informed him that the Hearing would continue in Claimant’s absence. Wiley departed the Hearing, after making the following statement:

**“I accept your ruling on that matter, Mr. Hearing Officer, and at this time I would ask that since she has made it perfectly clear that she is her own representative, I would ask that I could be excused at this time.” (Tp. 21, S. 159)**

Carrier’s witnesses remained at the Hearing and testified without cross examination concerning the events of the January 19, 1996 Hearing, the subsequent investigations into Claimant’s allegations concerning Reese’s unfair application of Rules concerning vacation, and Claimant’s failure to comply with the letter from Director Mechanical Maintenance Heilig. They further testified concerning her behavior when she was informed of her removal from service.

Testimony was offered to confirm that no irregularities were found in the records concerning granting of vacation during the entire period 1993-1995. (Tp. 27, A. 206, 208, 214). Carrier witnesses also testified without contradiction concerning Claimant’s insubordination on March 8, 1996, when Carrier attempted to inform Claimant of her suspension from service pending Investigation. The initial testimony on this matter was in the form of a contemporaneous memo from Senior General Foreman Parks who had

been present when Claimant's direct Supervisor attempted to discuss Claimant's potential discipline with her. That testimony reads in pertinent part as follows:

**"... Mrs. Gresham knocked on Mr. Reese's office door, I opened the door and applied the doorstop to keep the door open. Mrs. Gresham entered and told Mr. Reese that she was going to have to leave due to not feeling well. Mr. Reese instructed Mrs. Gresham to have a seat as he needed to discuss a matter with her. Mrs. Gresham, visibly irritated, angrily interrupted, saying no, sir. Mr. Reese instructed me to get Mr. Young and Mr. Rose. . . After contacting the officers, I returned to Mr. Reese's office only to find that Mrs. Gresham and Mr. Reese had moved into the clerks' outer office. Mr. Reese was standing in the doorway between the clerks' outer office and the Chief Clerk's office. Mrs. Gresham was using the telephone located on the work station closest to the network printer. . . [at 4:40 p.m.] Mr. Reese, Mr. Young and myself then entered into the clerks' outer office. Mrs. Gresham completed her phone call, then started to make another call. Mr. Reese instructed Mrs. Gresham to hang up the telephone. Mrs. Gresham told Mr. Reese no, that she had been having palpitations since he started harassing her earlier and continued dialing. Mr. Reese again instructed Mrs. Gresham to hang up the telephone, Mrs. Gresham continued with the call. From statements Mrs. Gresham made, it appeared that she'd called the doctor. Mrs. Gresham told the other party that she was being harassed at work and was having palpitations. Mr. Reese stood by quietly waiting for Mrs. Gresham to complete her telephone call. When Mrs. Gresham hung up the telephone, she walked past Mr. Reese and started out the door from the clerks' outer office to the hallway. Prior to Mrs. Gresham exiting the door, Mr. Reese instructed Mrs. Gresham to stop because he needed to talk to her. Mrs. Gresham continued, saying the she'd talked with the Sheriff's office, he couldn't keep her here and that she had to get her things. She also referred to an earlier investigation shouldn't have been held, that type of stuff. Mr. Reese followed, stopped in the doorway from the hallway to the alcove where the copier is located and told Mrs. Gresham: 'Mrs. Gresham, you're being removed from service pending investigation for conduct unbecoming an employee in that you failed to follow Mr. Heilig's instructions in his letters of February [22], 1996 and March 1, 1996. You'll be notified in writing when to attend the hearing. You're not to return to company**

premises until notified to do so.' While Mr. Reese was informing Mrs. Gresham of the reason for her removal from service, Mrs. Gresham got her things . . . turned and walked up to Mr. Reese. Mr. Reese let Mrs. Gresham pass, finishing his statement as she proceeded down the hallway toward the outside door.

After Mr. Reese let Mrs. Gresham pass, as he was finishing his statement with her going down the hall, Mrs. Gresham said: 'May God have mercy on your soul,' as she was making statements of her own, talking like trying to over talk him or prevent him from saying what he was trying to say to her. And, then the Special Officers that were there, Mr. Young and Mr. Rose, they followed Mrs. Gresham into the parking lot and asked her several times if she needed a ride, and I stepped out into the parking lot to see, you know, what was happening and Mrs. Gresham (*sic*) – Mr. Young and Mr. Rose stopped beside their car and at about 4:55 p.m. Mrs. Gresham got into the car with her husband and then the Special Officers followed the Gresham car from the property." (Tp. 30-32, A. 232, S. 238)

Testimony by subsequent witnesses at the Hearing confirmed the testimony of Carrier's first witness. Specifically, Reese described in detail how he had conducted the investigation of Claimant's allegations concerning discriminatory awarding of vacation days (Tp. 43-46, A. 367, 375). He also confirmed Claimant's failure to comply with Heilig's instruction regarding production of evidence or written retraction of her allegations (Tp. 50-51, A. 426, 434). In addition, his description of the events of March 8, 1996 conformed with that of Parks (Tp. 54-56, S. 460, 466). Reese also made the following statement:

"... One of the things that came to light after March 8th was that in the time frame when she left my office and I asked her to stay, went out and made the phone calls and we all went out to talk to her, she stated in this faxed letter to the three, Mr. Heilig, Mr. Reese, Mr. Parks, paragraph which would be the fourth paragraph of page one of five which was faxed from Fairmont Supply:

'Upon B. W. Reese's adamant insistence for me to remain on the premises, I called the Sheriff's Department, informed the officer what was happening and asked what could be done. I

was informed that I could not be held on my job against my wishes. I also called my husband, requested him to come immediately to pick me up.'

What I'd like to make reference to here is the fact that during the period she did all this, in this time frame, I could've very easily accomplished, if she had just remained in the office, the task that I had to do. And, it would not have involved all of these actions that Mrs. Gresham taken. She did not even have a ride home at work. She wouldn't stay in my office and let me finish it. She testified, she stated to me that she had to finish her wax job and so forth. My concern was that while during all this I had less than a minute to two minute conversation, it'd taken me less than a minute to two minute conversation to tell her what I had to do and offer her professional assistance to get home if she needed. So, what I'm saying here is, this is, you know, she went off on her own and did all this without provocation by me, an officer of the Carrier." (Tp. 59-60, A. 512)

Reese also elaborated on the events that took place in his office on March 8, 1996.

"... Mrs. Gresham, when she knocked on the door stated that she was not feeling well and that she wanted-needed to leave. I asked her, I told her I needed her to stay awhile and she stated that she needed to finish up her wax job and when I asked her to sit down, she responded: 'No, sir, you're not going to get my job for not finishing.' Nowhere did she ever say anything about chest pains or palpations and nowhere did I specifically say she couldn't leave work because at that time it was not an issue." (Tp. 61, S. 522)

In addition, Reese responded to an allegation in Claimant's affidavit that she was trying to call her doctor and he (Reese) prevented her. He testified that:

"... She did not specifically say she was calling her doctor. We got that out of the conversation when she was calling her doctor. We got that out of the conversation when she was talking to the people on the phone. [Also], no effort was made to physically restrain her or delay her. Our effort was to communicate with her what was necessary that we was removing her from service to comply and make everything professionally

handled. Mrs. Gresham, at no time, allowed us to ever finish a statement or ever to complete anything we were trying to say to her without trying to drown it out or totally refusing to comply with the simplest of instructions." (Tp. 62, S. 528)

The subsequent testimony of Norfolk Southern Police Department Supervisor Special Agent Young confirmed the testimony of the previous witnesses (Tp. 63-68). Upon being recalled for further testimony Reese stated that the doctor's note he had received from Claimant's doctor indicated that she should be available for work by April 2, 1996, the day before the Hearing. He noted that he had not received any further communication from her physician concerning her reason for not attending the Investigation, nor, to his knowledge, had anyone else at the facility (Tp. 69, A. 611, 613).

As noted above, the Claimant was discharged from Carrier's service. Her claim was processed as previously described. Claimant and her Attorney were present for the Referee Hearing conducted in Chicago on May 5, 1997. As Claimant noted in her September 25, 1997 correspondence to the Board following the Referee Hearing, there was an unfortunate delay in her Hearing time, due to previously scheduled Referee Hearings taking longer than anticipated. Notwithstanding, the Board heard her entire presentation, despite the fact that such delay resulted in disrupted travel plans for the Board Members. Following the Referee Hearing, the Board met in lengthy executive session, as is the normal procedure of the Board. In that correspondence, Claimant questioned the *bona fides* of that executive session. Specifically, she accused the Board of "shoving these grievances under the rug." It is apparent that Claimant has misunderstood the purpose of the executive session. In point of fact, it provides an opportunity for the Labor Member of the Board, in this case William R. Miller, to perfect Claimant's defense to whatever extent possible, and assure that the Neutral Member understood all arguments made by Claimant. That is precisely what occurred during the executive session following Claimant's Referee Hearing.

Upon a thorough review of the record before the Board, we find that Carrier had just cause for Claimant's dismissal. Claimant, despite her apparent familiarity with other aspects of labor relations, was utterly unaware of the nearly universal maxim: "Obey first and grieve later." For reasons that are unclear on this record, Claimant distanced herself from the very Organization which could have prevented her dismissal. Even if, *arguendo*, her beliefs concerning the alleged discrimination regarding vacation days had some basis, she would have been far better served to enlist the aid of her



Organization in filing a grievance detailing her beliefs. It should be noted, as well, that the Carrier took such accusations seriously and made a good faith attempt to discover whether Claimant's allegations were true.

Once the Carrier made its investigation and determined that no such malfeasance had occurred, it directed Claimant to provide evidence supporting her allegation, or apologize in writing for a false accusation. Again, had Claimant consulted with her Organization, it could have advised her regarding methods for supporting her allegation. Barring her ability to do so, the Organization would have guided her through the process of writing what, understandably, would be a reluctant apology, and then grieving the outcome, where appropriate. As the Carrier noted in its February 22, 1996 letter to Claimant, had Claimant complied with either option (evidence or apology) she would not have been disciplined at all. Yet she declined to do either.

Finally, after giving her a second chance to comply via its letter of March 8, 1996, the Carrier attempted to remove her from service, pending an Investigation, on the basis of insubordination. At this juncture, too, Claimant engaged in "self-help" and walked out on her Supervisor to prevent him from performing what was his legitimate duty under the circumstances. Even at this stage of her difficulties, had Claimant sought the advice of her representative, and made herself available to him for assistance, she might have saved her job. Yet, she persisted in her insistence on setting her own course.

Claimant consistently rejected the reasonable demands of her employer, and spurned the assistance of an Organization earnestly trying to assist her -- to save her from herself.<sup>3</sup> Under the circumstances, Claimant leaves the Board no choice but to uphold her discharge.

### **AWARD**

**Claim denied.**

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<sup>3</sup>See, for example, I Samuel 15:22 and 23.

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**Dated at Chicago, Illinois, this 30th day of December 1997.**