

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**THE NEW YORK CENTRAL RAILROAD (Eastern District)
(except Boston Division)**

STATEMENT OF CLAIM: Claim of System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, on the New York Central Railroad Company, Buffalo and East:

1. That the Carrier violated the Rules Agreement when, on August 26, 1955, it gave a hearing to Mrs. Edith T. Maloney, Stenographer-Clerk in office of the Passenger Trainmasters, Central Terminal, Buffalo, N. Y., and on August 31, 1955, dismissed her from its service for the following alleged reasons:

(a) Responsibility in mishandling of a considerable amount of correspondence by not having answered same.

(b) Responsibility in improper handling of timeslip of Engr. Boettcher dated June 24th.

(c) Failure to properly file correspondence and reports, etc. having same placed promiscuously in file and desk drawers with no semblance of order.

(d) Mishandling of correspondence, invoices and other matters relating to uniforms for employes, some of which was over one year old.

2. That the Carrier be required to restore Mrs. Edith T. Maloney to her former position of Stenographer-Clerk, and reimburse her in full from March 31, 1955, the date she was not permitted to resume work because of the contemplated hearing and disciplinary action which resulted in Mrs. Maloney's formal dismissal from its service on August 31, 1955, in violation of Rules Agreement as aforesaid.

OPINION OF BOARD: At the outset we will consider part 1 of Organization's claim that the Carrier violated the applicable agreement

"* * * when, on August 26, 1955, it gave a hearing to Mrs. Edith T. Maloney, Stenographer-Clerk in office of the Passenger Trainmasters, Central Terminal, Buffalo, N. Y., and on August 31, 1955, dismissed her from its service for the following alleged reasons: * * *"

They need not be detailed here.

It is an admitted fact that on August 26, 1955 Claimant was occupying an excepted position. A long line of decisions of this Board has held that a person holding an excepted position could be discharged from that position, or otherwise disciplined, without resort to the Clerks' Agreement. Award 2941 (Carter).

That same Award (2941) was concerned with a Claimant holding an excepted position being dismissed from service without an investigation.

"The question for decision,"

Referee Carter wrote in Award 2941,

"is whether her seniority rights under the current Agreement can be destroyed without an investigation provided for in that Agreement. * * *

"We think that Claimant's right to exercise her seniority and displace a junior employe under the Clerks' Agreement has not been impaired by the proceedings recited in this record. Her dismissal from the excepted position could not have the effect of so doing unless investigation was held in accordance with the provisions of the contract under which they were acquired."

An investigation, however, was held by the Carrier in the case here before us.

Considerable argument is offered on behalf of the Organization with respect to the effect of Carrier's action on Claimant's seniority rights.

"* * * These rights,"

such argument noted,

"the carrier made null and void when it deliberately withheld her from service when she reported for work on March 31, 1955 and subsequent thereto, and when it arbitrarily and capriciously dismissed her from service on August 31, 1955. To correct that wrong we must put Claimant back on the Stenographer-Clerk position, as sought by the claim, and wherefrom she can exercise her seniority rights under Rule 12, if unable to hold that position for any reason stated in Rule 20."

Had Organization claimed, as it did in Award 2941, that Claimant

"* * * be restored to service with seniority unimpaired, * * *"

we could then proceed to examine the investigation held in the instant case to determine if it was valid in the light of the defects charged by the Organization against it in the case now before us.

The Organization, however, did not so claim in the case here. It asks, in part 2 of the claim, that this Board rule

"That the Carrier be required to restore Mrs. Edith T. Maloney to her former position of Stenographer-Clerk * * *."

By our Rules, and numerous Awards upholding them, we cannot expand a claim before us. We are restricted to the language of the claim before us.

This Board, having no right to order Carrier to restore Claimant to an excepted position, the claim will be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 as charged.

AWARD

Claim denied for the reasons set forth in Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1958.