

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21921  
Docket Number CL-21964

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: ( Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employes  
( St. Louis-San Francisco Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
GL-8339, that:

1. Carrier violated the Agreement between the parties when on May 4, 1976, it unjustly and arbitrarily dismissed from its service, Mrs. Shirley Waxler, Clerk, Memphis, Tennessee.
2. Claimant was not advised of the precise charge 2s required by Rule 26. Carrier did not prove its charges and Claimant was not afforded a fair and impartial investigation as required by the rules; the investigation and decision resulting therefrom be declared null and void.
3. Carrier shall compensate Mrs. Waxler beginning April 21, 1976, date Claimant held from service, and continuing for each and every work day thereafter until Mrs. Waxler is returned to service with the Carrier. Compensation claimed shall be that of the position to which assigned at the time of her dismissal or the rate assigned to any position which was denied to her as a result of Carrier's unreasonable action in dismissing her from its service. The amount claimed is also subject to future wage adjustments.
4. Claim to also include any expenditures for insurance coverage which Mrs. Waxler is required to purchase for adequate coverage of herself and her dependents as a result of Carrier's action."

OPINION OF BOARD: Claimant was dismissed from service on May 4, 1976, for "vulgar, profane, threatening, insolent and dishonest statements" made to a Trainmaster and his wife, in violation of applicable portions of Rules 701, 702, and 706.

The Organization claims that the investigative hearing conducted by the Carrier was defective under Rules 26 through 31, especially that portion of Rule 26 reading:

"The investigation shall be held within seven days of the date when charged with the offense or held from service."

The hearing was initiated within the seven-day period. The fact that the hearing was recessed to an early date beyond the seven days, in order to have a nonemployee witness present, is not violative of the Rule. Further, the hearing notice was sufficiently specific to apprise the Claimant of what was to be discussed.

Nor does the Board find the hearing officer in procedural error when, contrary to the Organization's wishes, he confined the questioning to the issues in immediate dispute.

Serious questions of credibility were raised at the hearing, including the Claimant's complete denial of telephone conversations she was accused of having with the Trainmaster and his wife. It is not for the Board to resolve such questions. Suffice it to say that the Board finds no reason to disturb the conclusion of the Carrier, following the investigative hearing, that the conversation took place substantially as reported and that the penalty for such rule violation was not unreasonable.

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;

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That the Carrier and the Employes involved in this dispute are respectively Carrier 2nd Employes within the meaning or" 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:

A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.