**Award No. 1827**
**Docket No. MC-1401-71**
**2-PRR-I-'54**

# NATIONAL RAILROAD ADJUSTMENT BOARD

## SECOND DIVISION

**The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.**

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## PARTIES TO DISPUTE:

## VIOLET ROUSH FUHRMAN, DOROTHY CARPENTER KENNEDY, MARY F. QUIGLEY, et al (Petitioners)

## THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: Has the railroad the right to furlough or discharge women employees hired and employed under the Agreement of October 30, 1942 between the Pennsylvania Railroad and the Brotherhood of Railroad Shop Crafts of America, Pennsylvania System, at a time when the agreement of 1942 was still in full force and effect, said furloughing or discharging being carried out without any regard to the women employees' seniority rights under said agreement?

EMPLOYES' STATEMENT OF FACTS: The petitioners in this dispute are Violet Roush Fuhrman, formerly Violet P. Roush, Mary F. Quigley, Dorothy Carpenter Kennedy also known as Dorothy L. Kennedy, and all other women employes of the Pennsylvania Railroad Company employed under the agreement of October 30, 1942 between the Pennsylvania Railroad Company and the Brotherhood of Railroad Shop Crafts of America, Pennsylvania System, who were discharged by the carrier, on or about February 15, 1946. The total number of women employes of the carrier affected by this dispute is in excess of 150.

The petitioner, Violet Roush Fuhrman, was employed by the carrier as a shop laborer at the carrier's Enola engine house on or about March 16, 1943. On or about January 18, 1944, petitioner Fuhrman was awarded the position of electrician's helper, also in the Enola engine house. She held this latter position up until the date of her discharge on or about February 15, 1946.

Petitioner, Mary F. Quigley, entered the service of the Pennsylvania Railroad on or about September 9, 1942 as a coach cleaner in the Harrisburg passenger station. On or about November 28, 1945, she was awarded the position of car oiler which is equivalent to that of car repairman's helper and comes under the car repairman's craft. On or about February 15, 1946, she was reduced to the position of coach cleaner. Petitioner Quigley held this latter position until April 13, 1946 when she was discharged.

Petitioner, Dorothy Carpenter Kennedy, also known as Dorothy L. Kennedy, entered the service of the carrier on or about September 8, 1942, as

to the said agreements referred to and discussed above, which constitute the applicable agreements between the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is impowered only to decide the said dispute in accordance with the agreement between the parties to it. To grant the claim of the named claimants in this case would require the Board to disregard the agreements between the parties hereto and impose upon the carrier conditions of employment and obligations thereto not agreed upon by the parties to the applicable agreements. The Board has no jurisdiction or authority to take such action.

## CONCLUSION

The carrier has shown that the named claimants have failed to handle their claims in accordance with the requirements of the applicable agreements and that therefore their claims are barred; that in any event they were handled properly under the applicable agreements; and that they are not entitled to be rehired or compensated for all time lost since their temporary employment ceased.

Therefore, the carrier respectfully submits that your Honorable Board should dismiss the claims of the employes in this matter.

**FINDINGS:** The Second 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 employe 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.

The parties to said dispute were given due notice of hearing thereon.

This docket presents claims on behalf of three named individual women and all other women employes of the carrier who were given employment by it under an agreement between it and the Brotherhood of Railroad Shop Crafts of America, Pennsylvania Railroad System, dated October 30, 1942 and who were discharged by the carrier on or about February 15, 1946. It is contended the action of carrier in doing so was contrary to the provisions governing their employment and, because thereof, they asked that they be reinstated to the service of the carrier and ask that they be compensated for all back pay that they have lost by reason thereof.

The agreement of October 30, 1942, which related to employes of the carrier in its Maintenance of Equipment Department, superseded an agreement of July 8, 1942, and provided that women taken into the services of the carrier under the agreement would during the National Emergency and for a reasonable period thereafter, be considered as "temporary employes" and would acquire and exercise seniority in accordance with the applicable provisions of Schedule Regulations of Agreements "during the period of the present National Emergency."

Carrier contends the notice given by this Division to "All Concerned" pursuant to Sec. 3 First (j) of The Railway Labor Act, advising them of the dispute and when and where it would be heard by the Division, is not sufficient to meet the requirements of "due notice" because it does not sufficiently identify the true nature of the dispute so that affected employes

would be aware that they might, if the claim were sustained, be deprived of some of their present seniority rights and roster standing and thus possibly lose their jobs. Since this issue is entirely dependent upon the claim for reinstatement, which has been withdrawn and is no longer before us, the question is moot. Therefore it would serve no useful purpose to discuss it.

Carrier further contends that those now appearing here in behalf of the claimants have shown no authority to represent them. We do not think this is true as to the three named claimants. See Sec. 3 First (j) of The Railway Labor Act. As to all other women employes who were given employment by carrier under the agreement of October 30, 1942, and who were subsequently discharged by it on or about February 15, 1946, it is immaterial in view of our findings as hereinafter set forth.

Section 3 First (i) of The Railway Labor Act provides:

> "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 disputes."

It will be observed that this section requires disputes shall be handled on the property in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes. That officer, on this carrier, was the general manager.

No claim was ever made on the property in behalf of "all other women employes of the Pennsylvania Railroad, hired under the agreement of October 30, 1942 between the Pennsylvania Railroad Company and the Brotherhood of Railroad Shop Crafts of America, Pennsylvania System, who were discharged by the Pennsylvania Railroad on or about February 15, 1946." Nor were the claims filed on behalf of Mary F. Quigley and Dorothy Carpenter Kennedy handled in the usual manner up to and including the chief operating officer (general manager) of the carrier designated to handle such disputes before this dispute was referred to this Division.

Claimants suggest the claims of these two named claimants have since been handled on the property in a manner sufficient to meet this requirement. However, it will be noted the act provides that upon failing to reach an adjustment in this manner, that is, by handling it on the property up to and including the chief operating officer of the carrier designated to handle such disputes, the dispute may be referred by petition of the parties, or by either of them, to the appropriate division of the Adjustment Board. This requirement is a condition precedent to the right of appeal to the appropriate division of this Board. See Award 1275 of this Division.

We are also of the opinion that the claim of each individual employe so affected would be subject to whatever defenses carrier might have and while there is a certain common background as a basis for the claim we do not think it is a case where they should all be included in one general claim.

In view of what we have said we find the only claim of which the Division has jurisdiction, and which is therefore properly here for our consideration, is that of Violet Roush Fuhrman, formerly Violet P. Roush. She filed a claim on September 15, 1950 based on the contention that carrier failed to recall her to service as a furloughed electrician's helper.

Carrier employed Violet P. Roush (now Fuhrman) on March 16, 1943 as a shop laborer at its Enola enginehouse. Immediately prior to February 15, 1946 she held a position as an electrician's helper. As of the latter date carrier abolished this position, notified claimant her services with it were considered completed and marked her out of service. In other words she was discharged. It is apparent that carrier's action was considered by the claimant to have this effect until claimant filed her reply to carrier's Ex Parte Submission. We find that is what carrier did.

Regulation 7-A-2 of Part 1, of the parties' effective agreement, which applies to electrician helpers, provides:

> "When it is considered that an injustice has been done with respect to any matter other than discipline, the employe affected . . . may within ten (10) days present the case, in writing, to the employe's Foreman."

If claimant felt she was improperly discharged she should have presented her case, within the time as therein provided, to her foreman. This the record shows she failed to do.

Claimant contends she was furloughed in reduction of forces. In this respect 3-D-7 of Part 1 of the parties' effective agreement provides:

> "Employes furloughed in reduction in force who desire to retain seniority must, within ten (10) days from date to notification of such reduction, file with their employing officer their name and address and keep such officer advised of any change therein."

While we do not think claimant was furloughed in a reduction of forces we shall assume, for the purpose of discussion, that she was. It is apparent, from the record as a whole, that claimant, from the beginning thought she had been improperly discharged. While later in the record, after she became aware of this requirement, she filed a statement, in the form of an affidavit, to the effect that she did comply with the requirements of rule 3-D-7, we do not think she did.

Claimant says a person is not eligible to vote in a union election unless he is an employe in either an active or furloughed status. She then says the claimants, or at least most of them, were included by the carrier in the list of employes submitted by it to the National Mediation Board as eligible to vote, and thus carrier treated them as furloughed employes. This list was supplied at the request of a mediator of the National Mediation Board after carrier had omitted the names from the list it had furnished of eligible employes for the election. In the letter carrier stated:

> ". . . it is our understanding that when persons were laid off, they no longer had a right to recall to service and they ceased to be employes of this company."

Certainly it cannot be said that by reason of furnishing this list to the mediator carrier recognized them as furloughed employes.

Although we have found claimant was discharged and not furloughed in a reduction of forces and that, even, if furloughed in a reduction of forces, she failed to comply with the regulations so as to retain seniority nevertheless, for the purpose of discussing the meaning of the agreement of October 30, 1942, we shall assume she was furloughed in a reduction of forces and complied with the regulations so as to retain her seniority.

Carrier contends the seniority rights conferred by the Agreement of October 30, 1942 were limited to the period of time during which the man power shortage, caused by the demands of the armed forces and defense work during World War II, made it impossible to secure an adequate force of male employes.

Claimant contends it refers to the condition of the emergency proclaimed by the President of the United States on May 27, 1941 by Proclamation No. 2487 and consequently did not terminate until April 28, 1952 when a Presidential Proclamation to that effect was issued.

A written contract should be read as a whole and interpreted so as to give effect to its general purpose, if that is possible. The intention of the parties should be sought for in the language used. To understand the language used we may put ourselves in their (the parties to that contract) place and discover, if possible, the objects they had in view and the motives which dictated their choice of words and then choose that construction which will carry out the purpose and object they sought to accomplish.

That the agreement came about because of a manpower shortage resulting from the needs of the armed forces and defense plants during World War II is self-evident. The rights of these temporary employes were intended to be limited to that emergency, and for a reasonable period thereafter, in order to prevent such employment from interfering with the return of men to jobs with the carrier after the above needs for their services by our country had been met. This, we think, the record shows is how the parties on the property construed and applied it. We do not think the parties intended the seniority of these temporary employes should depend upon some official governmental pronouncement which had no relation to the object the parties sought to accomplish.

We find that by February 15, 1946 the emergency to which the agreement applied had been over for a reasonable period of time and that consequently claimant could thereafter claim no seniority rights under the agreement of October 30, 1942.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1954.