

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

**THE CHICAGO, ROCK ISLAND AND GULF RAILWAY
COMPANY**

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers that: The Chicago, Rock Island and Pacific and Chicago, Rock Island and Gulf Railway Companies should never have deleted the name of Mrs. A. C. Keemle from the Telegraphers' seniority roster, that her name should be restored to the roster and continued a part thereof, as an employe on leave of absence on account of physical disability, unless and until removed therefrom by a cause not contrary to the Telegraphers' Agreement with the Carrier."

STATEMENT OF FACTS: The parties jointly certified to the following statement of facts:

"After some fifteen years in the service of the Carrier, March 6, 1921, the Claimant found it necessary, on account of her failing health, to request a leave of absence for ninety days. At the end of this ninety-day period her physical condition not being improved sufficiently to return to her job an additional ninety-day period was requested, and granted by the Carrier's officials. And, on account of Mrs. Keemle's continued disability, successive ninety-day periods of leaves of absence were requested, and granted by the officials of the company, until Oct. 18, 1924, at which time Mrs. Keemle was notified by the Carrier's division Superintendent, Mr. C. E. Green, her present leave of absence expired Nov. 12, 1924, that on and after this date, if she did not return to the service and protect her job, her record would be closed out. Mrs. Keemle did not return to the service as advised by the division superintendent and her record was closed and her name thereafter did not appear on the Telegraphers' seniority roster."

An agreement bearing date of Jan. 1, 1928, is in effect between the parties.

POSITION OF EMPLOYES: "For approximately fifteen years prior to Mar. 6, 1921, Telegrapher Mrs. Achsah C. Keemle, nee Achsah C. Horton, was employed by the Chicago, Rock Island and Pacific and the Chicago, Rock Island and Gulf Railway Company at various points on the Missouri Division. On or about June 6, 1921, while employed as telegrapher at Spickards,

incapacitated; and no occasion now presents itself that would justify a change in this long established practice recognized alike by the carrier and the Order of Railroad Telegraphers."

OPINION OF BOARD: In this claim of the General Committee that the name of Mrs. A. C. Keemle, which was deleted from the Telegraphers' seniority roster by the Carrier on Nov. 12, 1924, should be restored to the roster and continued as an employe on leave of absence on account of physical disability, the Carrier contends that for various reasons cited, and particularly that the case had not been appealed to the United States Labor Board and the System Board of Adjustment existing respectively in 1925 and 1926 and from 1926 to 1934, this dispute should be dismissed as one not pending and unadjusted on the date of the approval of the Amended Railway Labor Act, June 21, 1934.

In reply to the contention of the Carrier the Board submits that from the standpoint of the evidence submitted in this case, it was an unfinished dispute that might well be considered as pending and unadjusted on the date of the approval of the Amended Railway Labor Act.

However that may be the Act is not limited to cases that were pending and unadjusted on the date of its approval, in the sense that such cases had been presented and were being held for adjustment and adjudication, but applied to disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements, including cases pending and unadjusted.

Under this interpretation of Paragraph (i) of Section 3 of the Amended Railway Labor Act, coupled as it is with a protest made in January of 1925, the Board rules that this case and the dispute involved is properly before this Third Division of the National Railroad Adjustment Board.

In support of their contention that the name of Mrs. Keemle should not have been deleted from the seniority roster in 1924 and should be restored, the General Committee submits Article 19 (e), Article 9 and Article 13 (a) of the agreement between the parties, and cites Circular 13 issued from the office of the President of the Carrier on Aug. 15, 1928, all of which the General Committee contends have a bearing on the claim at issue.

The Carrier submits that the employe in whose behalf this claim is made entered the service of the Company as Miss Horton on September 5, 1908, as a telegraph operator. In 1915 she married A. C. Keemle and continued her employment. Between 1912 and 1920 Mrs. Keemle was granted numerous leaves of absence on account of illness. On Jan. 1, 1920, Mrs. Keemle requested and was granted a 90 day leave of absence on account of illness, and subsequent leaves of absence were requested and granted up to Mar. 1, 1921, when she returned to service. After working 6 days Mrs. Keemle requested and was granted another leave of absence because of ill health. This leave of absence expired on June 6, 1921, following which additional leaves of absence were requested and granted in 90 day periods until Nov. 12, 1924, when, because it became apparent that there was little or no possibility of this employe returning to work, she was advised by the Superintendent of the Carrier that her record would be closed account of her incapacity.

In the several articles of the agreement submitted by the General Committee, while no limitations are fixed in Article 19 (e) of the agreement between the parties as to the number of successive 90 day periods leave of absence will be granted on account of sickness, a reasonable interpretation of this rule would imply that such periods are granted with the expectancy of the employe being able to return to his duties with the carrier, and indicate the advisability if not the necessity of applying some limitations, especially when, as in this instant claim, the previous history of the employe in whose behalf this claim is made is considered in connection with the fact of her unfortunate long and continued disability in such instances where

no services rendered and no general improvement in the employe's physical condition is evidenced over a period of years, Article 19 (e) might well be considered in connection with that portion of Article 9 in which promotion is dependent and predicated upon the capacity of the employe for increased responsibility, and which the Carrier has a reasonable right to expect from the employes in its service.

Under the circumstances and from the evidence submitted the Board finds no basis for any attempt to interfere with the action of the Carrier.

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 employe involved in this dispute are respectively carrier and employe 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 there is no basis for disturbing the action of the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 29th day of October, 1937.