

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS
AND STATION EMPLOYES
SOUTHEASTERN EXPRESS COMPANY**

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood for correction of seniority roster, Accounting Department, Atlanta, Ga., to properly record seniority date of Mrs. Wilma Weltner, as of November 1, 1930, in accordance with the rules of the agreement."

EMPLOYEES' STATEMENT OF FACTS: The employees' statement of facts, summarized, is that Mrs. Weltner entered the service of the carrier in the seniority district in which the dispute arose, on July 26, 1925, and remained in active service until April, 1930; that during April, 1930, she voluntarily left the service and left the city of Atlanta; that she returned to service on or about November 1, 1930, having been out of service considerably in excess of ninety days; that no leave of absence of ninety days was granted when she left in April, nor was there any agreement between the management and the representative of the employees as required by rule 42. During the period 1930-1936 the carrier failed to post seniority roster for the department in which Mrs. Weltner was employed; but upon representation made by representative of the organization did post an official roster for the department on January 1, 1937, which showed Mrs. Weltner's seniority as July 26, 1925. Whereupon, the committee of the organization protested such date and requested that it be changed to November 1, 1930. Conference was held with the departmental chief clerk on the subject and agreement reached, confirmed by letter of the chief clerk to the local representative dated June 17, 1937, changing Mrs. Weltner's date to November 1, 1930. Shortly thereafter, the auditor, head of the department, again changed the roster without conference with the organization to record Mrs. Weltner's seniority date as of July 26, 1925.

CARRIER'S STATEMENT OF FACTS: The carrier's statement of facts, as summarized, is that Mrs. Weltner entered the service in the accounting department July 26, 1925, and continued uninterruptedly in the service until April 30, 1930. Prior to and until the beginning of 1931, seniority rosters of all employees covered by the rules of the agreement were posted in this office, on which Mrs. Weltner's name appeared with the date July 26, 1925.

On April 30, 1930, Mrs. Weltner applied to the chief clerk of the accounting department, her immediate superior, for a leave of absence, that she might accompany her husband to another city where he would undertake a business venture, with the privilege of returning to her employment if the business venture should fail. No written leave of absence was granted her. On July 1, 1930, she wrote the chief clerk that she wished to return to her position, which she was told she might do on or before expiration of her ninety-day leave. She did return on July 29 to resume her position but was requested to remain off for a time in order that furloughed employees in greater need might enjoy employment.

"Re-Entering Service—Rule 24: Employees voluntarily leaving the service will, if they re-enter, be considered new employees."

and contend that Mrs. Weltner's date of July 26, 1925, as shown on the 1937 roster was incorrect, since she had left the service in 1930. They say that the chief clerk "forthwith" granted their request for change of the roster and confirmed the same in a letter to the local representative, dated June 17, 1937, in which he said "the seniority of Mrs. Wilma Weltner is established as of November 1st, 1930." They contend that Mrs. Weltner was without proper leave of absence and was, therefore, out of the service of the carrier; that under rule 19 her seniority should be established as of November 1, 1930, the date she returned to service.

CARRIER'S POSITION: Carrier cites rule 42, reading:

"Leave of Absence—Rule 42: Except for physical disability, leave of absence in excess of ninety (90) days in any calendar year shall not be granted unless by agreement between the management and the duly accredited representatives of the employees.

"The arbitrary refusal of a reasonable amount of leave of absence to employees when they can be spared, or failure to handle promptly cases involving sickness or business matters of serious importance to the employee, is an improper practice and may be handled as unjust treatment under this agreement.

"An employee who fails to report for duty at the expiration of leave of absence shall be considered out of the service except that when failure to report on time is the result of unavoidable delay, the leave will be extended to include such delay. When leave of absence in excess of thirty (30) days is granted, the General Chairman will be furnished with a copy of letter granting such leave."

and admits that it granted Mrs. Weltner leave of absence in excess of thirty days without giving copy of letter to General Chairman. It further says that there was a mutual acquiescence on the part of the carrier and the organization (in non-application of the rules of the agreement) because of the utter lack of membership in the organization in the accounting department forces, and the carrier was relieved of the duty of furnishing copy of letter granting leave to the general chairman.

OPINION OF THE BOARD: The current agreement in effect between the parties to this dispute was effective August 27, 1927. The first rule of the agreement states that it governs the hours of service and working conditions of all employees in the service who are members or may hereafter become members of the organization.

On the question of whether Mrs. Weltner was granted a written leave of absence there is no dispute between the parties. She was not. As to whether Mrs. Weltner was granted any leave of absence, or did in fact leave the service on April 30, 1930, there is sharp dispute. The employees assert that in their conference with the chief clerk of the department, following protest of Mrs. Weltner's seniority date on the 1937 roster, no mention was made by the chief clerk of any leave of absence having been granted Mrs. Weltner, and that in response to the direct question he stated no leave had been granted. The carrier, on the other hand, asserts that Mrs. Weltner was granted a definite leave of absence, but the carrier's representative testified at the hearing that there was no pay roll record or notation made at that time to show that Mrs. Weltner was absent on leave, which he explained by stating that it was not then customary to note on the records the reasons for the absence of an employee or separation from service.

The carrier asserts that Mrs. Weltner sought to resume service on July 29, but was importuned to continue her leave in order that needy furloughed employees might enjoy employment; that she acquiesced and did not return to service until November 1, 1930. The roster of January 1, 1931, shows

five employees with seniority dates in 1930. One of these was employed on July 25, four days before Mrs. Weltner was asked to waive employment for the benefit of needy furloughed employees, and another August 16, seventeen days after that request was made of her. The 1937 roster shows three of these employees remaining in the service.

It is unfortunate that documentary evidence which would ordinarily be relied upon in a case of this nature to establish the facts vital to the issue is entirely lacking in this case. We are obliged to rely entirely on the memory of the parties to this dispute with respect to what happened seven years before it arose, and it does not impugn the integrity of either of them that their recollections of events vital to the issue are diametrically opposed.

It is not material to a determination of the issue in this case whether there were any members of the organization employed in the accounting office during the years 1931 to 1936. It is not material to the issue that a roster was not posted during those years. There were members of the organization among the employees in the accounting office in 1937, and in recognition of that fact the carrier posted a roster in that year. Necessarily, the roster included the names of all employees in the accounting department holding positions below the rank of those specifically excepted in the agreement, and the seniority datum of all employees on the roster, whether members or non-members, must be determined in the same manner. Rule 4 of the agreement in evidence prescribes a basis, which is the same in all essential particulars as that generally used in the compilation of seniority rosters. It says that seniority shall consist of the time in continuous service. If Mrs. Weltner's continuous service with the carrier began on November 1, 1930, that is her seniority date. Her continuous service might have been interrupted by granting proper leave of absence. But the evidence in this case indicates that Mrs. Weltner did not secure a proper leave of absence, and if she did not secure proper leave in the first place, the circumstances of the extension are not material.

It is the opinion of the Board that Mrs. Weltner did not secure a proper leave of absence on April 30, 1930, and, therefore, her continuous service with this carrier dates from November 1, 1930, and that is her seniority date.

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 employees involved in this dispute are respectively carrier and employees 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 Mrs. Weltner's continuous service with this carrier dates from November 1, 1930, and that shall be her seniority date.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill., this 23rd day of May, 1938.