

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Lines that, Mrs. Florence Nellans Harris was improperly dismissed from the service of the Carrier on November 30, 1937, account marrying while in the service, and that, she shall be reinstated to her regularly assigned position of second trick telegrapher at Fallis, Oklahoma, and be compensated retroactively to December 5, 1937, the date she returned from a leave of absence and was ready to resume work, in the amount she would have earned on the position."

EMPLOYEES' STATEMENT OF FACTS: "An agreement bearing the date of August 1, 1928, as to rules, working conditions and rates of pay is in effect between the parties to this dispute.

"Mrs. Florence Nellans was employed in the regular manner on March 21, 1921 and remained in continuous service of the company until removed therefrom by the management on November 30, 1937, account having married while in the service.

"On August 16, 1937, Mrs. Nellans married George A. Harris and she continued to work thereafter. On October 8, 1937, she requested, and was granted, a sixty (60) day leave of absence. Upon her return from this leave of absence granted by the management she reported for service on her regularly assigned position, second trick telegrapher at Fallis. Her telegram notifying the management of her intention to return to service read as follows:

'Fallis, Oklahoma, Dec. 4, 1937.

'F. H. S.
'J. I. P.

'Will protect my job at Fallis tomorrow December 5th, Joint.

'(Sig.) Florence Nellans.'

"In reply to her wire Superintendent Shaller wired her as follows:

'Muskogee, Okla., Dec. 4, 1937

'Florence Nellans Harris,
'Fallis, Okla.

'Your wire date about protecting job at Fallis: Wrote you Cache, Oklahoma, November 30, we had information you have married since granting your leave of absence effective October 8, account illness

"Letter of the Carrier dated April 13, 1927, to W. C. Thompson commenting further on the rule (marked Exhibit E).

"Letter of the Carrier of May 31, 1927, having reference to an individual case (Ruby Penfold Leak) (marked Exhibit F).

"Letter of W. C. Thompson to the Carrier dated June 3, 1927, declining to agree to the carrier's position, (marked Exhibit G).

"Letter of the Carrier to W. C. Thompson, dated June 10, 1927, commenting further about the Ruby Penfold Leak case, (marked Exhibit H).

"Letter of General Chairman Thompson dated June 13, 1927, stating that the case had been turned over to the President, Mr. Manion, of the Organization, for his handling, (marked Exhibit I).

"Letter of July 18, 1927, from Mr. L. M. Eddy, to the Carrier asking for an engagement to discuss the case, (marked Exhibit J).

"Letter of the Carrier to L. M. Eddy, dated August 31, 1927, following the conference, and indicating the concurrence of the Vice President, of The Order of Railroad Telegraphers in the rule. A copy of this letter was sent to General Chairman Thompson. (Marked Exhibit K).

"No further protest about this rule has been made by the Organization.

"The rule of this carrier in the matter of married women was not and is not an isolated one. Numerous railroads have a similar rule; numerous other Corporations have a similar rule. Labor organizations themselves have had and do have such a rule. There have been comments in the press at various times concerning the rule. It cannot rightly be said the rule which was adopted was essentially unusual or peculiar to this Carrier.

"The handling of this subject in 1927 with The Order of Railroad Telegraphers was definite and justified the Carrier's conclusion that the rule was acquiesced in by the Organization representing the telegraph operators on the Missouri-Kansas-Texas Lines.

"Since the organization knew or at least has known of this rule since 1927, there has been sufficient time and opportunity to enter general protest against it and seek to negotiate a settlement of the question if for any reason they desired to withdraw their acceptance after the conference in 1927 on the appeal of the case by the General Chairman to the President of the Organization. This has never been done and after the conference with The Order of Railroad Telegraphers' Vice President in 1927, the Carrier is justified in considering the rule was and is accepted and acquiesced in by the organization, for the employes whom it represents.

"The Carrier respectfully requests the Board to find for the Carrier and deny the complaint of the Organization and employe.

"If any statements in the employes submission are not fully explained in this submission, we desire ample time and opportunity to make reply."

OPINION OF BOARD: The question in this case is over the right of the carrier to discharge a woman employe for getting married. Her seniority date is March 21, 1921. The carrier claims that it adopted a policy in 1921, including that:

"Female employes engaging in matrimony would have no seniority standing, automatically sever their connection with the railroad, and be immediately removed from the roster."

The stated policy was never published or promulgated in any form and was not made a part of the seniority or discipline regulations of the schedule

through agreement between the parties to it. Clearly the carrier could not by unilateral action invade the vested property right the claimant had in seniority by the adoption of any regulation subsequent to her seniority date. The carrier has failed to show that it had established this policy prior thereto.

Apparently realizing this principle, the carrier in 1927 undertook negotiations with the organization, looking to an agreement to the same effect. The organization here concerned declined to enter into such agreement, although the carrier claims the Clerks' organization did. Also during the year 1927 a specific controversy arose over the discharge by the carrier of another woman employe on the same ground, and it was ultimately handled with the carrier by a vice president of the organization, with the result, as the carrier claims, that said vice president agreed to the adoption of such a rule. We do not so read the understanding there arrived at. The question actually in controversy between the parties was over the fact that in still another case the carrier had not enforced the policy, and the agreement reached was that there should be no discrimination but that both employes should be discharged. There is some question as to the power of the vice president to modify the agreement of the General Committee without its concurrence, but in any event we do not construe it as a modification of the agreement but rather as the settlement of a particular controversy. This view is emphasized by the fact that a new schedule was entered into effective August 1, 1928, less than a year after this alleged agreement, and it contains no reference thereto nor any change in the seniority or discipline rules affecting the subject.

In the circumstances, the discharge of the claimant was wrongful.

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 the action of the Carrier in the instant case was in violation of the terms of the prevailing agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of December, 1938.