

Award No. 1784
Docket No. CL-1798

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

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

**DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Mr. Charles M. Van Fleet, Ticket Clerk, Alamosa, Colorado, be restored to service with seniority rights unimpaired and be compensated for time lost each day subsequent to July 21, 1941.

JOINT STATEMENT OF FACTS: Prior to January 3, 1933, Mr. Charles M. Van Fleet was ticket clerk at Alamosa, Colorado. Effective that date, he was granted leave of absence on account of being elected to position of County Clerk, Alamosa County, at Alamosa, Colorado. The original leave was extended from time to time on Mr. Van Fleet's re-election to office, the last leave granted expiring January 10, 1943. In July, 1941, Mr. Van Fleet made request that he be returned to service and paid for time lost, as set forth in "Statement of Claim," which request was denied by the Management.

POSITION OF EMPLOYEES: Mr. Charles M. Van Fleet, Clerk, Alamosa Station, entered the service of the Denver & Rio Grande Western Railroad, August 25, 1918 and worked on various positions until January 3, 1933 at which time he was granted a leave of absence account being elected County Clerk, Alamosa, Colorado. This leave of absence was extended from time to time as Mr. Van Fleet was reelected to the position of County Clerk. There is no dispute between the parties as to the fact that Mr. Van Fleet was on a recognized leave of absence when, on July 16, 1941, he advised the Agent at Alamosa, Colorado, that he had resigned his position as County Clerk and wished to reenter Denver & Rio Grande Western service. Under date of July 16, 1941, Mr. Van Fleet wrote the Agent at Alamosa, as follows:

"Having resigned my position as County Clerk on June 20th, 1941, and wishing to be reemployed by the D. & R. G. W. RR. Co., in my former position or better if available, I am anxious to go to work as soon as possible, so please advise earliest date that I can go to work. Would like to return by July 21st."

Under same date Agent Sorensen replied as follows:

"Referring to your letter of July 16th relative to returning to service of the Denver and Rio Grande Western Railroad Co., on position formerly held by you up to the time you were elected to County Clerk of Alamosa County, or to a better position if available.

leave of absence, account being re-elected to office of County Clerk, Alamosa County.

"Your present leave of absence is hereby extended for a period of two years, or until January 10, 1943."

If Rule 13 is applicable, it would be just as logical for the Carrier to hold that Mr. Van Fleet's leave was for a two-year period and he could not return to service prior to January 10, 1943.

As to Rule 24, paragraph (a), that rule was fully complied with as is evidenced in Exhibit "A" and the following exchange of correspondence between Division Superintendent C. B. Carpenter and Agent W. A. Sorensen:

Letter dated July 2, 1941, to Agent Sorensen from Supt. Carpenter reads:

"Referring to our recent conversation, relative to permitting C. M. Van Fleet to return to service.

"This employe should not be permitted to return to service, and in the event he insists on doing so he will be given a formal investigation, the charge of which will be 'conduct unbecoming an employe and for violating the laws of the country.' If such a request is made, advise me in order that I may arrange for Mr. Peake to hold formal investigation."

to which Agent Sorensen replied under date of July 7, 1941, as follows:

"Referring to your letter regarding employment of Mr. C. M. Van Fleet.

"I advised Mr. Van Fleet July 5th that we could not put him back to work.

"I do not know as yet whether or not he will ask for an investigation as when I informed him that he could not return to work he said he would let me know shortly if he would ask for an investigation, however, I do not believe that he will."

While Mr. Van Fleet did not put his request for return to service in writing until July 16th, he had, however, discussed the matter fully with both Superintendent Carpenter and Agent Sorensen several times between June 24th and July 8th. On June 5th he was verbally advised by both the Superintendent and the Agent he would not be returned to service without first undergoing investigation. Mr. Van Fleet likewise verbally stated he preferred not to go through with an investigation, but that if he did decide later on to do so, he would advise accordingly, which he has not done to date. Mr. Van Fleet has not been denied an investigation, and there has been no denial on the part of either Mr. Van Fleet or his representatives that there was a shortage in his accounts, therefore, it is the Carrier's position that it is justified and within its rights in refusing to return Mr. Van Fleet to service.

The fact that the County Commissioners decided not to prosecute him and the further fact that he may have made arrangements to restore the money, does not remove the stigma of dishonesty.

In support of the statement that Mr. Van Fleet was offered an investigation, there is attached affidavits signed by Superintendent C. B. Carpenter and Agent W. A. Sorensen, marked Exhibit "B." Mr. Van Fleet has not been denied an investigation; on the contrary he has freely admitted that Agent Sorensen offered him one but informed him at the time that it probably would not do any good to undergo it.

OPINION OF BOARD: Charles M. Van Fleet was ticket clerk at Alamosa, Colorado. On January 3, 1933, Mr. Van Fleet was granted a leave of absence on account of being elected County Clerk. This leave was extended

from time to time, the last extension expiring January 10, 1943. On June 20, 1941, Mr. Van Fleet resigned his position as County Clerk, and on July 16, 1941, sent a letter to the agent at Alamosa requesting that he "be re-employed by the D. & R. G. W. R.R. Co., in my former position or better." This claim is predicated first upon Rule 13 of the Agreement, the Claimant stating in the original submission to this Board, "It is the position of the Organization that Mr. Van Fleet was wrongfully and unjustly denied the right to return to his position, as provided in Rule 13."

Claimants further contend that Carrier violated Rule 24 of the Agreement. The Carrier contends that it complied with Rule 24. However, we are of the opinion that at this time it is not material whether the Carrier did or did not comply with Rule 24. Mr. Van Fleet is on a leave of absence; this leave does not expire until January 10, 1943. Rule 13 provides that, "An employe returning after leave of absence * * * will return to his former position." It is on this rule that Mr. Van Fleet predicates his right to return to his former position.

It was contended before this Referee that the right to return accrues to Mr. Van Fleet by reason of his seniority, and his right is not dependent on Rule 13. But certainly Rule 13 must have some purpose, and as we read the rule it relates to returning only "after leave of absence." We think a reasonable construction of this language is that it limits the right of an employe to return, which right he perhaps has by virtue of seniority, to "after leave of absence," and that he has no such right during his leave.

We think such a construction to be reasonable both from the viewpoint of the employes and the Carrier. An employe taking a position where the incumbent is on a definite two-year leave would like the assurance that at least so far as concerns the employe on leave, the position will last for the length of time the leave is granted. The Carrier must of necessity adjust its operation on the basis that the employe will be off duty until the leave expires.

Under this construction of the rule Mr. Van Fleet was without right to return at the time he made demand and, therefore, the claim cannot be sustained. Should he make demand to return upon the expiration of his leave of absence, such application will be proper and should have the consideration 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 Claimant's right to return being limited to "after leave of absence," no violation of the agreement resulted by Carrier refusing to permit him to return before his leave expired.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1942.