

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad, (1) that Marion V. Bartsch and Alice G. Quigley, telephone message operators in "GO" Relay Office, Pittsburgh, Pa., forfeited their priority rights in that office when they failed to report for extra work as provided in Regulations 3-A-2 and 3-E-2; (2) that the later restoration of those office priority rights to Alice G. Quigley violated the provisions of Regulation 3-A-2 and the interpretation, for which it is claimed (3) that E. Thelma Miller, extra telephone message operator who reported for extra work in "GO" promptly when called back to service, shall be compensated for such days as she was compelled to remain idle while extra work in said office was being performed by Alice G. Quigley.

**EMPLOYEES' STATEMENT OF FACTS:** No regularly established extra list has been maintained in "GO" General Relay Office, Pittsburgh, Pa., for Telephone Message Operators. Furloughed employees with "priority rights" and "office seniority" in that office are recalled back for extra work as it may arise.

On January 11, 1941 it was necessary to recall a furloughed employee for extra service as a Telephone Message Operator to work January 12, 1941.

At that time the four senior furloughed Telephone Message Operators on the roster were as follows:

No. 28.	Marion V. Bartsch	9-19-1927.
No. 29.	Alicia M. Kramer	9-19-1927.
No. 30.	Alice G. Quigley	9-19-1927.
No. 31.	E. Thelma Miller	9-19-1927.

The Chief Operator attempted to call these employees in seniority order for the extra work with the following results:

Marion V. Bartsch, was in New Jersey account sickness of her mother and could not return.

Alicia M. Kramer was working at the Presbyterian Hospital, Pittsburgh, Pa.

Alice G. Quigley was temporarily working and in this work at that time traveling to the West Coast and she could not be reached.

E. Thelma Miller was recalled and accepted the call for work on January 12, 1941 as well as on subsequent dates.

On March 19, 1941, Miss Alice G. Quigley, Roster No. 30, reported to "GO" office and advised the Chief Operator that she would be available and

In any event, even if Quigley had forfeited her seniority rights in "GO" Office by refusing to accept the extra work, and for that reason had been improperly used to perform extra work in "GO" Office in violation of the Agreement, the present Claimant would not thereby be entitled to the compensation which she claims. As the Carrier has pointed out above, the method of handling extra work in "GO" Office, securing employes for such work, and apportioning the work among the employes is not fixed by any specific provisions of the applicable Agreement. It is based entirely upon the practice of the Carrier, concurred in and accepted for many years by the employes, which in turn embodies some of the principles applied in other situations by the Agreement. Nothing in the Agreement between the Carrier and the class of employes of which the Claimant is a member provides that the Carrier shall use furloughed employes for extra work in offices where no extra list is established; nothing in the Agreement provides how extra work will be divided among such furloughed employes. The Carrier was not required by any provision of the Agreement to give the extra work in "GO" Office to Quigley and Miller or to either of them. The Claimant is attempting to base her recovery solely upon a practice established by the Carrier and acquiesced in by the employes and not upon any rights which she may possess under the applicable Agreement. Since the Carrier has for years used furloughed employes with seniority rights in "GO" Office to perform extra work in that office, she contends that she, a furloughed employe with the proper seniority rights, is thereby entitled to perform such work; and that if an employe who no longer possesses such seniority rights is used for this work, she, being available and entitled to the work, must be compensated. It should be obvious to your Honorable Board that penalty payments such as those claimed in this case must be based upon an actual agreement between the parties, to use certain employes for certain work, and to pay them if not used. Here there was no agreement to use Miller or any other furloughed employe to do extra work in "GO" Office, nor was there any agreement that such employes would be compensated if other persons were used. Nothing in the applicable Agreement indicates that the parties intended that the Carrier should be required to make any payment to employes under the circumstances present in this case.

Furthermore, since Miller was herself called to perform extra work not under any application of the Agreement but in accordance with the long established practice and understanding of the parties as to the handling of furloughed employes to do extra work in "GO" Office, she may not properly claim, after having accepted the benefits of this practice, that the practice is improper and that some other method of assigning extra work or handling furloughed employes should have been used.

The Carrier therefore respectfully submits that the claim of E. Thelma Miller is without any proper foundation in the applicable Agreement and should be denied.

#### CONCLUSION

In light of the foregoing, it is respectfully submitted the Carrier's action in permitting Marian V. Bartsch and Alice G. Quigley to retain seniority in "GO" General Relay Office did not constitute a violation of the applicable Agreement, and that E. T. Miller is not entitled to be compensated for the dates in question when extra work in "GO" Relay Office was performed by Alice G. Quigley.

**OPINION OF BOARD:** This claim involves the priority rights of Marion V. Bartsch and Alice G. Quigley, Telephone Message Operators in "GO" General Relay Office, Pittsburgh, Pa. These two parties secured their "priority" or "office seniority" rights because they secured the positions in "GO" prior to August 1, 1928. If they had secured their positions since that date, they would hold only seniority rights.

On January 11, 1941, it was necessary to recall a furloughed employe for extra service as a Telephone Message Operator to work on January 12, 1941.

At that time, senior furloughed Telephone Message Operators on the roster were as follows: No. 28, Marion V. Bartsch, No. 29, Alicia M. Kramer, No. 30, Alice G. Quigley, and No. 31, E. Thelma Miller. They were called to work in the above order, but the first three could not be found, and the work was given to E. Thelma Miller. Since May 15, 1941, such extra work as has developed has been equally divided between Alice G. Quigley and E. Thelma Miller. Alicia Kramer has since resigned and has left the service.

The Petitioner contends that Marion V. Bartsch and Alice G. Quigley have forfeited their "office priority rights" in "GO" General Relay Office, and that E. Thelma Miller is entitled to be paid for each day that Alice G. Quigley has been permitted to work since May 15, 1941, in "GO" General Relay Office.

The following rules are involved in this claim:

Regulation 3-A-2, par. (d):

"Extra work in these offices shall be advertised to provide a sufficient working force. Employees with office seniority assigned to the extra list under the provisions of this paragraph shall forfeit office seniority if they fail to report when called for extra work."

Interpretation to Regulation 3-A-2, Questions 4 and 5:

"4. Question—Employee 'B' is on furlough from his home Division. He has office seniority in an office covered by this Regulation and has been assigned to the extra list of the office where he holds office seniority. Employee 'B' is called for extra work sufficiently in advance of the time he is required to report but fails to respond.

"(a) Does this employee forfeit his office seniority?

"(b) Does he forfeit seniority on the Division from which furloughed?

"Answer—(a) Yes.

(b) No.

"5. Question—Employee 'C' is a Telegrapher with office seniority in an office covered by this Regulation but, on account of reduction in force in the office where he holds office seniority, is employed as Telegrapher on his home Division. Employee 'C' is on the Extra list of the office where he holds seniority. Employee 'C' is notified to report for extra work sufficiently in advance of the time required to report for duty but fails to respond.

"(a) Does this employee forfeit his office seniority?

"(b) Does he forfeit seniority on his home Division?

"Answer—(a) Yes.

(b) No."

Regulation 3-E-2:

"Employees will be laid off in reverse order of seniority, and when force is increased will be returned to service in order of seniority, provided they keep their employing officer informed of their address and report for duty within (10) days after being notified."

Regulation 3-E-2 provides that in a force reduction the employee who is youngest in point of service will be laid off first, and when the force is increased, the oldest employee in point of service will be called first to perform the work, and when that employee is called, he must return for service within ten days.

Regulation 3-A-2 requires that there must be an extra list and for extra work, the employee holding the senior position on the extra list shall be called first, and his failure to report shall cause a forfeiture of his seniority rights.

It is admitted there was no extra list at the office in question. Therefore, in the absence of an extra list, this rule could not apply to the situation in this claim. Nor does the Board believe that the seniority roster is equivalent to an extra list. The Carrier is at fault in not keeping an extra list, but this claim is not based on that fact.

Therefore, a furloughed employe not on an extra list does not forfeit office seniority by failing to report when called for extra work.

**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 employes involved in this dispute are respectively carrier and employes 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 was no violation of the agreement.

#### AWARD

Claims (1, 2, and 3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 18th day of January, 1943.