

Award Number 3124
Docket Number CL-3100

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the Clerks' Agreement when on August 19, 1944, it discharged Mrs. Ardis S. Moe, Steno-Clerk, Car Distributor's Office, Tacoma Division, Tacoma, Washington, and

(2) That Carrier be required to reinstate Steno-Clerk, Mrs. Ardis S. Moe and reimburse her for wage loss incurred since August 19, 1944, and

(3) That Carrier be required to show the name and seniority date of Mrs. Ardis S. Moe on the Yellowstone Division as transferred under the provisions of Rule 24 (b) of Clerks' current Agreement.

OPINION OF BOARD: On June 14, 1944, Superintendent Burgess, over the objections of Superintendent McCauley, assigned Claimant to a regular position on the Tacoma Division under vacancy bulletin 318. She held this position for 66 days until August 18, 1944, at which time she was removed from service because of being discharged on the Yellowstone Division on July 19, 1944 for violation of Rule 701 which prohibits employes from absenting themselves from duty without proper authority. As to whether the dismissal was proper depends upon whether Claimant was required to secure the permission of Superintendent McCauley before permanently transferring to the Tacoma Division.

The parties are in dispute as to the interpretation to be placed upon Rule 24 (b), which reads:

"An employe who transfers from a Class B roster position to a Class A roster position, or from a Class A roster position to a Class B roster position, on the same seniority district will retain and accumulate seniority on the roster from which transferred, except as herein provided for. An employe who has seniority on both Class A and Class B rosters, or an employe who has seniority only on the Class A roster, will, if qualified, be required to exercise his seniority and accept service on Class A roster positions of more than thirty (30) days' duration in preference to service on a Class B roster position. Should he fail to so exercise his seniority, his Class A roster seniority will be forfeited.

"An employe transferring from one seniority district to another seniority district shall retain his seniority on the seniority district from which transferred for a period of five years, but may not exercise

such seniority as long as he can by virtue of his seniority and qualifications hold a position on the seniority district to which transferred. An employe who transfers from one seniority district to another seniority district and who returns to the seniority district from which transferred will forfeit all seniority rights on the district to which transferred."

We do not find it necessary to interpret the rule in this case because the facts show that Claimant secured the consent of the Carrier through its Superintendent Burgess to permanently transfer to the Tacoma Division. When Superintendent Burgess bulletined in Claimant to a regular position in the Tacoma District Claimant had a right to rely on his authority so to do.

He was equal in authority to Superintendent McCaulcy and Claimant cannot be prejudiced by reason of the fact that two Superintendents of Carrier were taking opposite positions in connection with the rights of Claimant under the rules.

On May 23, 1944, Claimant wrote Superintendent McCauley at Glendive, Montana, as follows:

"Referring to your registered letter to me dated May 22nd with reference to my letter of May 20th.

"Rule 24 (b) of the Clerks Schedule, as amended Sept. 1, 1939, gives us the privilege of transferring from one Division to another and I have transferred under that rule. I am not returning to work on the Yellowstone Division but am returning to the Tacoma Division."

Claimant sent Superintendent Burgess a copy of this letter and thereafter a personal record form was prepared by the Tacoma Division which showed that Claimant was permanently transferred to the Tacoma Division "per Mrs. Moe's letter of May 23rd."

It appears therefore that based upon Claimant's letter of May 23 in which she took the position that she was entitled to transfer under the rules, Superintendent Burgess permanently transferred her to his Division. Under these circumstances Carrier is not in a position to claim that Claimant improperly transferred to the Tacoma Division. We hold therefore that Claimant was not lawfully removed from the service of 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 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 Carrier violated the Agreement.

AWARD

Claim (1), (2) and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 19th day of February, 1946.