

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

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

NEW ORLEANS PUBLIC BELT RAILROAD

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

(a) The Carrier violated the Clerks' Agreement in February 1945 when it refused to permit Mrs. Lois H. Ward to return to her former position or exercise displacement rights upon her return from leave of absence. Also,

(b) Claim that Mrs. Ward now be returned to service with seniority rights unimpaired, and that she be paid at the schedule rate of her position for each working day she has been withheld from service.

EMPLOYES' STATEMENT OF FACTS: On September 16, 1940 the Carrier and the Brotherhood entered into an agreement dealing with leaves of absence which provides in part:

"It is also agreed that similar (indeterminate) leaves of absence will be granted to clerical employees who are called by competent governmental authorities to accept service with other than the armed forces of the United States in connection with the National Defense Program and that this leave of absence will terminate within thirty (30) days after they sever their connection with such service."

A copy of the above mentioned agreement is attached hereto as Exhibit "A".

On July 9, 1942 Mrs. Ward requested an indefinite leave of absence to work at the New Orleans Port of Embarkation. (See Exhibit B.) Colonel Bedell, Assistant Chief of Staff, at the New Orleans Port of Embarkation, also asked the carrier to grant Mrs. Ward necessary leave of absence. (Exhibit C.)

On July 11, 1942 the carrier granted Mrs. Ward leave of absence for ninety (90) days, but on August 7, 1942 that leave of absence was cancelled and in lieu thereof the carrier granted Mrs. Ward an indefinite leave of absence. (Exhibit D.)

In October 1943 Mrs. Ward requested a release in order that she might return to service with the Public Belt Railroad but her request was denied (see Exhibits I and J), and she was transferred to another position with the New Orleans Port of Embarkation.

On January 31, 1945 General Chairman Bassemier wrote General Manager Garland and stated that Mrs. Ward was no longer employed at the New

POSITION OF CARRIER: The Public Belt submits that the request for leave of absence made by Colonel V. J. Bedell on behalf of Mrs. Ward and by Mrs. Lois H. Ward in her own behalf was for a specific and stated purpose, namely, so that Mrs. Ward might undertake employment in the Department of "Operations and Training" as the stenographer to the Head of that Department, Colonel Bedell, and for the stated reason that, because of her previous experience, Mrs. Ward could take Colonel Bedell's "peculiar style of dictation"; further, that, as required by the existing agreements, the Public Belt carried Mrs. Ward's name on the clerks' seniority roster until protest of such action was made by the Brotherhood; further, that the protest brought about an investigation which developed that Mrs. Ward had left the Department of Operations and Training for which employment she had requested and obtained the leave of absence; further, that Mrs. Ward had not made timely application to be returned to her former position with Public Belt, with seniority rights unimpaired; further, that as the result of the conferences and investigation, it was established that Mrs. Ward had lost her seniority rights and consequently, in compliance with the duty imposed on the Public Belt to protect the employees junior to Mrs. Ward, her name was stricken from the clerks' seniority roster; and further that the Public Belt had no choice but to refuse to reinstate Mrs. Ward to her former position and to refuse to replace her name on the clerks' seniority roster.

(Exhibits not reproduced.)

OPINION OF BOARD: Although the facts and contentions of the parties are fully set forth in their respective submissions, such as we deem pertinent to a determination of this claim will bear repetition here.

On September 16, 1940, a letter agreement was entered into between V. J. Bedell, then General Manager of the Carrier and the Committee representing the Clerks' Organization governing indeterminate leaves of absence for employees serving in the Armed Forces and in Government service in connection with the National Defense Program, the pertinent part of which reads as follows:

"It is also agreed that similar leave of absence will be granted to clerical employees who are called by competent governmental authorities to accept service with other than the armed forces of the United States in connection with the National Defense Program and that this leave of absence will terminate within thirty (30) days after they sever their connection with such service.

"Said leave of absence shall in no way impair the seniority rights of the absentees. However, under present regulations of the Railroad Retirement Board, any period during which they may be so engaged or earnings accruing therefrom cannot be counted as creditable service or earnings towards annuities under the Retirement Act."

On July 8, 1942, the same V. J. Bedell, then a Colonel assigned to the New Orleans Port of Embarkation, wrote the General Manager of the Carrier as follows:

"Under the present conditions of employment, it seems to be impossible to secure the services of a competent stenographer-secretary who can handle my peculiar style of dictation.

Mrs. Lois Ward who was my secretary during the period while I was Valuation Engineer and Chief Engineer of the Public Belt would, I believe, be able to handle this work.

While I regret to disturb your organization, I am requesting as a 'military necessity' that you give Mrs. Ward a leave of absence for the duration of the emergency."

On July 9, 1942, Mrs. Ward (claimant) wrote the General Manager of the Carrier as follows:

"Effective Monday, July 13, 1942, and without further notice, due to emergency calling, please grant me indefinite leave of absence, for

period of duration of War Emergency, N.O. Port of Embarkation, with the privilege of returning to my former position, or exercise seniority rights to any position bulletined during such absence, in accordance with Rule 11, Article IV, of agreement between N. O. Public Belt R. R. and Brotherhood of Railway and S/S Clerks, etc., or at any time within this period."

On the basis of these letters, Mrs. Ward was granted a ninety-day leave of absence from the Carrier. Then on August 7, 1942, the Carrier wrote Mrs. Ward as follows:

"The ninety (90) days leave of absence granted to you under date of July 11, 1942, pursuant to your request is hereby cancelled and in lieu thereof and pursuant to your written request of July 9, 1942, you are hereby granted an indefinite leave of absence, effective Monday, July 13, 1942.

In this connection, and for your information, I enclose herewith copy of letter received from Mr. William N. Bassemier, General Chairman, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, dated July 29, 1942, and copy of my reply thereto under date of August 1, 1942."

The letter of July 29, 1942, dealt with interpretation of what constituted competent governmental authority in which the Brotherhood stated that the Officer of the Army, Navy or other department of the Government should be the head of the department requesting the services of an employee and the letter of August 1, 1942, subscribed to that interpretation and stated further that it was the Carrier's understanding that it has been mutually agreed that Mrs. Ward would be granted an indefinite leave of absence as per her request and the request of the head of the Operations and Training Department at Port of Embarkation, New Orleans, Louisiana.

Mrs. Ward entered upon duty in the Government service at the New Orleans Port of Embarkation and later in the course of her Government employment was assigned to duties at other places, although still carried on the rolls as an employee of the Port. On February 17, 1945, Mrs. Ward, having resigned from the War Department, requested that she be reinstated to her former duties and exercise seniority rights at the earliest possible date.

The Carrier denied Mrs. Ward's request by letter, dated March 3, 1945, the pertinent part of which reads:

"An agreement in your case between the Brotherhood of Railway & Steamship Clerks and the Public Belt Railroad was entered into because of the request of Col. Bedell that you, because of your prior service with him could handle his 'Peculiar style of dictation' and of his request that you be granted this leave as a 'military necessity'.

When you transferred from the department of Operations and Training on October 16, 1943, your leave automatically expired and you should have returned to work with the Public Belt Railroad within thirty (30) days from the date of your leaving the department of Operations and Training."

The Carrier asserts a procedural defect in the presentation of this claim which if upheld would defeat the claim in its entirety. Hence, we shall devote ourselves, first, to a consideration of the validity of this defense for if upheld, it precludes a disposition on the merits. Section VI, Rule 1(a) of the agreement between the Carrier and employees effective March 1, 1936, provides as follows:

"Should any employee subject to this agreement desire to make a complaint on grounds of unjust treatment or of violation of any of the provisions of this agreement, the employee must make such complaint to the head of his department within twenty-four (24) hours after the occurrence complained of."

The Carrier points out that claimant took no action to protect such rights as she may have felt she possessed from receipt of Carrier's letter of March 3, 1945 to June 8, 1945, and hence, did not comply with the aforesaid section. It is not entirely true that she took no action between those two dates, for it appears that at least on May 24, 1945 and prior thereto, there had been conferences held between representatives of the Brotherhood and the Carrier concerning Mrs. Ward's case. It does not appear from the record when the first protest of the Carrier's decision as contained in the letter of March 3, 1945, was lodged, but it is a fair presumption that it was not within 24 hours of its receipt.

Does this rule apply to a situation such as this? If it did, would it not appear logical to conclude that Rule 2(a) of the same section would also apply, which rule reads as follows:

"No employe shall be disciplined or dismissed or otherwise unjustly treated without investigation at which the employe may be represented by the Protective Committee. The employe, however, may be held out of service pending such investigation. The investigation shall be held within five (5) days of date when charged with offense or held from service."

Inasmuch as the whole of Section VI applies to discipline and grievances, it would appear to be a fair conclusion that the Carrier should have observed the requirements of Rule 2 (a). If there were procedural defects in the prosecution of the claim, it seems that both parties were equally at fault in that respect. However, neither party raised any such questions in the course of the discussion of this claim on the property nor in the original submission to this Board. We believe that it was apparent from the conduct of the parties that it was not considered by either as affecting the determination of this dispute. We think that both parties, and rightfully so, considered this as a dispute the outcome of which hinged upon the applicability and compliance with the special agreement of September 16, 1940. That being so, we believe the case is properly before this Board for a decision on the merits.

Although the record in this case is extremely lengthy and much argument is submitted by both sides, it appears to us that the issue is comparatively simple and is to be resolved on the basis of two questions:

(1) Was an indeterminate leave of absence granted to Mrs. Ward as being called by competent governmental authority and accepting service with other than the Armed Forces of the United States in connection with the National Defense Program?

(2) Did Mrs. Ward apply for reinstatement within thirty (30) days after she severed her connection with such service?

With respect to Question (1), we find that Colonel Bedell, although prefacing his request for Mrs. Ward's services with a statement that it was impossible for him to secure the services of a competent stenographer-secretary who could handle his style of dictation requested that the Carrier give her a **leave of absence for the emergency**. Mrs. Ward also requested an indefinite leave of absence for the emergency. The Carrier advised Mrs. Ward by letter of August 7, 1942, quoted above in this opinion, that she was granted an indefinite leave of absence effective Monday, July 13, 1942, and in so doing sent her copies of correspondence with the General Chairman indicating that it was mutually agreed that she would be granted an indefinite leave of absence **per her request, and the request of the head of the Operations and Training Department** at the Port of Embarkation, New Orleans, Louisiana. Now, both Colonel Bedell's request and Mrs. Ward's request were for leave of absence for the duration of the emergency. That the leave was granted pursuant to the agreement of September 16, 1940, can hardly be doubted for the Carrier was careful to enclose with its letter to Mrs. Ward copies of correspondence dealing with the interpretation of that agreement indicating that the leave of absence granted was pursuant to its provisions. All circumstances considered, we have little difficulty concluding that the answer to Question (1) posed above is "Yes". What of the

Carrier's contention that the leave granted Mrs. Ward was for a specific purpose to-wit: to handle the "peculiar style of dictation" of Colonel Bedell, and therefore, when she transferred from the Department of Operations and Training on October 16, 1943, her leave automatically expired? In our view, there is little weight in that argument. To handle his "peculiar style of dictation" was the reason which prompted Colonel Bedell to request Mrs. Ward's services. However, it was not the sole purpose for which she was granted leave, for at no point did she request the leave for that specific purpose, nor did the Carrier limit its granting to that specific purpose. Furthermore, as appears from the record, when Mrs. Ward entered government service, she became a civilian employe of the War Department and not an employe of Colonel Bedell. As such, she was subject to assignment by the War Department to service for whomever the Department felt she was best fitted. Doubtlessly, during her initial period of employment it was felt she was best fitted for service under Colonel Bedell, but when he was transferred to another assignment, her status as a civilian employe of the War Department did not change and she still remained in the service of the Government in connection with the National Defense Program. With respect to her freedom to resign at any time, we believe that the letter of A. J. Leach of the United States Civil Service Commission accurately sets forth the circumstances under which she could have resigned in October, 1943, to-wit: that she could not have been hired by another employer without a statement of availability from the Port of Embarkation for a period of sixty days following her resignation. At that point, she was not free to resign without incurring that penalty despite the letter of Colonel Bedell addressed "To Whom It May Concern" saying that she had completed her assignment for him and was available for other employment, for Colonel Bedell had no authority to issue statements of availability. In any event, it was not incumbent upon her to resign at that time in order to secure the benefits of the letter agreement of September 16, 1940.

With respect to Question (2), we believe that it is apparent that the answer thereto is "Yes", for Mrs. Ward resigned from Government service on February 5, 1945, and requested reinstatement on February 17, 1945.

From what has been said above, it is apparent that an affirmative award is required. Accordingly, Claim (a) will be sustained; as to Claim (b), it will also be sustained, except that the amount thereof should be less any amount earned in any other employment.

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 letter agreement of September 16, 1940.

AWARD

Claim (a) sustained.

Claim (b) sustained to extent indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary.

Dated at Chicago, Illinois, this 3rd day of December, 1948.