

Award No. 4906

Docket No. CL-5009

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The Carrier violated the provisions of the Rules Agreement, effective May 1, 1942, particularly Rules 2-A-7 and 6-A-1, when Mary D. Petroski, Station Baggage-man, Pennsylvania-30th Street Station, Philadelphia, Pennsylvania, Philadelphia Terminal Division, was held off duty from October 1, to December 20, 1946.

(b) Mary D. Petroski be compensated for all wage loss suffered for the period October 1 to December 20, 1946, inclusive. (Docket E-462)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class of craft of employees in which the claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant in this case is an employee holding a regular position of Station Baggage-man, Pennsylvania-30th Street Station, Philadelphia, Pennsylvania. This position is covered by the Scope of that Rules Agreement and the employee has seniority standing in Group 2 on the Seniority Roster for the Philadelphia Terminal Division.

While on duty November 7, 1945, the Claimant suffered an injury while loading a mail car on Train No. 135, falling between the car and the loading platform and injuring her legs. The accident was witnessed and was reported. From November 16, 1945, until October 1, 1946, the Claimant was off duty and under the care of her doctor. Dr. Thomas Aceto of 2010 West Tioga Street, Philadelphia, Pennsylvania, furnished the Claimant with a statement

OPINION OF BOARD: The claimant is an employe holding a regular position of Station Baggage-man, Pennsylvania—30th Street Station, Philadelphia, Pennsylvania. The claimant was off duty from November 16, 1945 until October 1, 1946. The claimant states that she was injured on November 15, 1945, and that she was under medical care. Claimant states that she returned to work, accompanied by James Niessen, a local committeeman and her representative, on October 1, 1946; that she received a Return to Duty card from Dr. A. P. Harrison, a Medical Examiner of the Carrier; that she presented this card to W. P. Fogle, Carrier's Agent; that Fogle refused to permit claimant to return to work that day. She further states that on December 18, 1946 she was instructed to obtain a Return to Duty card, by the Agent; that she obtained said card on December 21, 1946 and was returned to duty that day.

The claimant states that the Carrier violated Rules 2-A-47 and 6-A-1 (a) in holding off this claimant from duty from October 1, 1946 to December 21, 1946.

The Carrier states that on December 19, 1945 a registered letter was sent to the claimant stating that she last reported for duty on November 16, 1945 and that the Carrier had not heard from her since November 16, 1945. The Carrier requested her to return to duty not later than December 26, 1945 or by that date give satisfactory reasons for remaining absent from work. If she neither returned to duty nor justified her absence, they said they would assume that she resigned from service. The claimant did not justify her absence or return to duty. On December 26, 1945 she was marked as leaving the service. The Carrier states that the claimant, accompanied by her representative Niessen, reported for duty on October 8, 1946, about eleven months after receiving the letter from the Carrier. Claimant told the Agent that she had been injured on November 8, 1945, had been ill, under the care of a physician, but now was ready to return to work. The Agent prepared an office memorandum stating that he told the claimant she had been reported out of service. He instructed the claimant to write him as to her intentions of returning to work and the reason she had been absent without permission since November 1945, and that he would refer this matter to the Superintendent. On October 14, 1946 the claimant did write the Agent, stating that she had received an injury on November 8, 1945, that she had been under the care of a physician and that she was desirous of returning to work. On December 18, 1946 the Agent wrote claimant to obtain a Return to Duty card and report to work on or before December 21, 1946. The claimant obtained the Return to Duty card and reported for work on December 21, 1946.

The dates of obtaining a Return to Duty card on October 1st and the reporting for work are in conflict. Carrier states she returned for work on October 8th without a Return to Duty card. On October 8th, however, the claimant was told to write to the Agent, explaining her absence from duty. This she did on the 14th of October, 1946. The complete file on her matter could not be referred to the Superintendent until sometime after October 14, 1946. Under Rule 2-A-7, an employe returning to duty after sickness or disability shall return to his or her former position if available. The position must have been available because the Carrier did reinstate the claimant on December 21, 1946. Therefore, the only question to be decided by this Board is whether or not the Carrier waited an unreasonable time to reinstate this claimant under Rule 2-A-7. Time is not mentioned in the rule; however, it does state "shall return" which would mean immediately upon return. However, there were circumstances in this case that had to be investigated by the Carrier. They could not start until after October 14, 1946, the date of claimant's letter. Claimant made the delay possible in the first place by not answering Carrier's letter of November 1945, and then waiting from October 8th or October 1st, whichever the date may be, to October 14th, 1946 to state reasons for being off duty eleven months. The Carrier, however, took from October 14, 1946 to December 18, 1946 before notifying this claimant to obtain a Return to Duty card to report for work on or before December 21, 1946 which would be an unreasonable length of time for an investigation even in this case. A very liberal reasonable length of time would be from

October 15, 1946, the date the Carrier probably received claimant's letter which would complete its investigation file, to November 15, 1946. Therefore, it is the finding of this Board that the claim shall be allowed from November 15, 1946.

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 Employees involved in this dispute are respectively carrier and employees 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 Agreement was violated to the extent shown in the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of July, 1950.