

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement at Marion, Ohio, when it failed and refused to assign employe A. F. Sheehe, to position of Clerk to the Road Foreman of Engines, and

That Carrier shall award position of Clerk to the Road Foreman of Engines to Mrs. A. F. Sheehe and reimburse her for any and all wage loss sustained retroactive to June 20, 1949.

EMPLOYEES' STATEMENT OF FACTS: On March 26, 1949, Mrs. A. F. Sheehe was called by the Erie Railroad and asked if she would return to the Carrier's employment and cover vacancy that had occurred as a result of an employe being granted a leave of absence. Mrs. Sheehe reported and was put to work on March 28th, 1949. Mr. Bradt was moved over to Mr. Jones position, the employe on leave of absence. Mrs. Baker was moved on to Mr. Bradt's position and Mrs. Sheehe went to work on Mrs. Baker's position. Mrs. Sheehe was paid rate of rate of position Clerk to Road Foreman of Engines.

On May 9, 1949, Mrs. Sheehe was advised that Mr. Jones had resigned and that she was to fill the position of Clerk to the Road Foreman of Engines. On May 10, 1949, Carrier issued its Bulletin #987 advertising vacancy on position of Clerk to Road Foreman of Engines, see employes' Exhibit "A". Mrs. Sheehe submitted her application for position bulletined see Employes' Exhibit "B". On May 18, 1949 Mr. Coons Chief Clerk called Mrs. Sheehe into Road Foreman of Engines Office and advised her that her bid was the only one received, but that they were not allowed to assign her the position because she was a married woman. Mr. Coons stated at the time, that she could work the position until ninety days from March 28, and that they would then forget all about it and assign her to the same position. Under date of May 19, 1949, Carrier issued its Bulletin No. 987 advising all concerned that no applications were received. Employes' Exhibit "C". On June 17, 1949, Carrier acknowledged her application for position of Clerk to Road Foreman of Engines by advising her that her application was not approved. Mrs. Sheehe worked the position of Clerk to Road Foreman of Engines until June 20, 1949.

On June 23rd, the Carrier hired and placed a new employe on the position of Clerk to the Road Foreman of Engines and Mrs. Sheehe was furloughed. Carrier again recalled Mrs. Sheehe to service on August 15, 1949, and she worked until August 31, 1949, when she was again furloughed.

name does not appear thereon. Not having established seniority she held no right to be recalled to service.

When the Road Foreman's Clerk was granted a leave of absence Mrs. Sheehe was simply solicited by the Carrier to fill the temporary vacancy thus created.

This claim is without merit and should be denied for the following reasons:

1. Carrier has not violated any rule of the existing agreement.
2. Application for re-employment was not approved by Superintendent of Employment.
3. Services were terminated within the time specified in Rule 46.
4. First Division Awards 3099, 3327, 4680, 5256, 6699.
5. Second Division Awards 866, 867 and 868.

(Exhibits not reproduced).

OPINION OF BOARD: The facts necessary to insure a proper understanding of the all decisive issue involved in this case will be stated as briefly as the state of the record permits.

Mrs. A. F. Sheehe, on all dates here in question a married woman, first entered service of the Carrier January 10, 1944, at Marion, Ohio, as extra clerk-typist, and worked on various clerical and stenographic positions for varying periods of time until she was laid off in November 1947. We shall assume without deciding the point, since it is not material to a decision of the issue to which we have reference, her employment relation terminated on account of her failure to protect her furlough rights in conformity with Rule 12 (c) of the current clerical Agreement. We likewise assume that when she first entered the Carrier's service she made application for employment which was subsequently approved.

June 28, 1948, Mrs. Sheehe again entered the Carrier's service but resigned on July 4, 1948. She again entered its service on December 29, 1948, and again resigned on January 3, 1949.

On March 28, 1949, as a result of a telephone call from the Carrier Mrs. Sheehe went back into its service on a temporary basis, covering a vacancy that had occurred as a result of an employe being granted a leave of absence. This same employe later resigned. Thereafter on May 10, 1949, the Carrier bulletined a vacancy on the position of Clerk to Road Foreman of Engines which was then being worked by Mrs. Sheehe. She submitted her application for the bulletined position and in fact was the only person making a bid therefor. Nevertheless, in a few days, she was advised by the Chief Clerk that due to the Company's policy of not employing married women permanently he would not be allowed to assign her the position. In the meantime the Carrier issued another bulletin stating no bids had been received for the position in question and that it would be filled in accordance with the clerical Agreement. June 17, 1949, it notified Mrs. Sheehe her application for the position had not been approved and that her service would terminate at the end of the day's work on June 20. Three days later the position was filled by a new employe. Mrs. Sheehe then caused this instant claim to be presented to the Carrier in which she charged her rights under the existing clerical Agreement were such at it was required to accept her bid and assign her to the position.

While, as we have indicated, the facts heretofore related are essential to an understanding of the factual situation, it had just as well be now stated that many of them, as well as others of less importance which have not been mentioned, are not material to our decision of the all decisive issue. The real

question we have to determine is whether, under the existing contract, an employe, be he man or woman, who resigned from the Carrier's service on January 3, 1949, and then re-entered that service, working from March 28 to June 17 of the same year—the date on which Mrs. Sheehe's application was rejected—or, for that matter, June 20, the date her employment was terminated, has acquired such rights under the contract existing between the Carrier and the Brotherhood as to require the former to assign him or her the vacant position which had been bulletined and bid on as herein related.

It must, of course, be conceded that unless the Carrier violated the current contract in refusing to assign Mrs. Sheehe the position she attempted to bid in there is no sound basis for a sustaining Award in this case. Therefore we turn directly to the two provisions of that Agreement on which it seeks to justify its action.

The first of these provisions is Rule 15, relating to the re-entering of the Carrier's service. It provides:

"Employes voluntarily leaving the service, will, if they re-enter, be considered new employes."

The second is Rule 46, dealing with the validation of employment, which reads:

"Application for employment, if not satisfactory, will be rejected within ninety (90) days after first service, otherwise applicant will be considered accepted, except that application need not be approved until after forty-five (45) days' work has been completed."

It must likewise be admitted, or if not it must be so held, that (1) a collective Agreement is a restriction on the Carrier's right to hire and discharge employes at will, (2) that in the absence of any provision to the contrary, which we pause to add does not appear in the instant contract, the Carrier in its selection of new employes has the right to select those employes as well as the right to follow the policy of not employing married women, permanently or otherwise, and (3) Rule 46, heretofore quoted, must be construed as giving the Carrier the absolute right to reject any new application for employment, with or without reason other than "not satisfactory", so long as that rejection is made within its terms. See Award No. 2217.

Indeed the claimant does not seriously dispute the correctness of the applicable principles just outlined. In fact, when the record is carefully examined it is clear that she inferentially admits them but seeks to evade their application by confession and avoidance. For that reason we turn directly to contentions advanced by her in support of her position, noting as we do that if she was a "new employe" within the meaning of that term as used in Rule 15, the Carrier terminated her employment within ninety days from that date as authorized in Rule 46.

First it is urged claimant was not a new employe because her resignation of January 3, 1949, as well as the one preceding it, was not voluntary but forced by the Carrier. The record discloses no threats or coercion and it is conceded claimant, who is an intelligent and educated woman, personally signed the instruments in question. Under such conditions we would not be warranted in going behind the resignations or in holding they were of no force and effect. Therefore this contention cannot be upheld.

Next claimant argues that Rule 46 has reference only to persons who make applications for employment and that since the Carrier called claimant she made no application, hence the rule has no application. In connection with this claim it is contended that under such conditions the Carrier was bound to consider her as a furloughed employe. Neither contention can be sustained. It will be noted the rule does not specify the essential elements of an application for employment. We think it can be oral or written and that claimant's

action in going back to work, even at the Carrier's request, was tantamount to the making of an application for authority to re-enter its service. Of a certainty the absence of any application whatsoever would not change her status as an employee. Under the express provisions of Rule 15, having voluntarily left the service of the Carrier, she was still a new employee.

Finally, it is contended that under the provisions of Article II, Rule 3 of the Agreement, dealing with seniority rights, and particularly subsection (a) of such, rule, claimant acquired seniority rights in 1949 which permitted her to bid in and required the Carrier to assign her to the position in question irrespective of whether she was a new employee whose application for employment had been rejected within ninety days after first service. We are not disposed to labor the many contentions advanced in support of this position. It suffices to say the effective and decisive answer to all of them is to be found in the Opinion of Award 3520, involving rules similar to those here in question, where it is said:

"It is clear to us that Claimant's acceptance as an employee under her application dated June 14, 1943, was conditioned upon its approval within 60 days, as provided by Rule 22. When the application was disapproved within that period, whether with or without a justifiable reason, her relationship with the Carrier terminated without the accrual of any rights whatever under the contract. Consequently, she acquired no seniority rights by virtue of her conditional employment."

The conclusions heretofore announced necessarily preclude the allowance of a sustaining Award.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 31st day of July, 1950.