

Award No. 6227

Docket No. CL-6308

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAILROAD COMPANY

Wm. Wyer, Trustee

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

1. The Carrier violated the provisions of the Clerks' Agreement and specifically Rules 3-C-1 (f) and 5-D-1 (c) and (d), when it permitted Mrs. Ellen Kelly to return to service as a Telephone Operator, after an absence of over four (4) years, with a seniority date of 7-12-40, instead of a seniority date of 11-27-50, and

2. The Carrier shall correct the seniority date of Mrs. Kelly to read 1-27-50 and shall pay all telephone operators, at prevailing rates, who lost time account of Mrs. Kelly being assigned ahead of such affected telephone operators, retroactive to November 27, 1950.

EMPLOYES' STATEMENT OF FACTS. There is in effect a Rules Agreement effective July 1, 1945, covering clerical, other office, station and storehouse employes, between this Carrier and this Brotherhood. The Rules Agreement will be considered a part of this Statement of Facts. Various Rules and Memorandums thereof may be referred to from time to time without quoting in full.

This dispute involves the question of whether or not the Carrier complied with the meaning and intent of the Clerks' Agreement when it verbally granted Mrs. Ellen Redmond (now Mrs. Kelly), a Leave of Absence instead of granting the Leave of Absence in writing and furnishing a copy of same to the General Chairman, and Local Chairman. This dispute further involves the question of whether or not Mrs. Ellen Kelly complied with the meaning and intent of the Clerks' Agreement when she failed to keep her proper address on file with Management, with copy to the General Chairman, as stipulated in Rules 3-C-1 (a) and 3-C-1 (f).

since it has not been handled on the property in accordance with the provisions of Rule 4-D-1 of the applicable Rules Agreement, in that it was never handled with the Division Operator who is the immediate Supervisor of the Telephone Operators for the purposes of the applicable Agreement. Further, that regardless of any other consideration, no date prior to December 1, 1950 can properly be considered in the consideration of this portion of the claim, since it was not presented by the General Chairman until March 10, 1951.

Attention is also directed to the fact that to allow this claim would require your Honorable Board to write a new and different rule not previously agreed to by the parties to the applicable Rules Agreement, a prerogative which this Honorable Board does not possess. See Award 5079—4335—2622—2343—1230—3rd Division N.R.A.B.

In conclusion, we again direct attention to the fact that Mrs. Kelly is an 'interested party' in these proceedings since a decision sustaining the position of the Brotherhood will adversely affect her seniority standing in Seniority District No. 3. Therefore, Mrs. Kelly is entitled to be notified of the pendency of this matter before any further action is taken in connection with it, and to be accorded the opportunity of participating in person or through counsel in any and all hearings held in connection with it.

(Exhibits not reproduced.)

OPINION OF BOARD: Contention is made by the Organization of specific violations of Rule 3-C-1 (f) and 5-D-1 (c) and (d) of the current Agreement between the parties, and that as a direct result of said violations are requesting this Board to correct the seniority date of one Mrs. Ellen Kelly, and in addition is making a monetary claim for all telephone operators, who have allegedly lost time, account of Mrs. Kelly having received assignment ahead of such affected telephone operators, retroactive to November 27, 1950.

It is conceded by the Carrier that the leave of absence granted Mrs. Kelly was not in conformity with Rule 5-D-1 (c) and (b), in that no written request was made by the employe as provided by (c), nor was a copy of such leave of absence furnished in writing to the General Chairman and Local Chairman.

That as a result of such violation by the Carrier, and failure of this employe to make request in writing, as required, the seniority of the employe Mrs. Ellen Kelly, has been jeopardized.

The record further shows, and the parties agree that no notice of this matter pending before the Board, has been given Mrs. Ellen Kelly, nor has she been given an opportunity by this Board to appear personally or by representative to protect her rights of seniority, since the record clearly discloses she may or may not be adversely affected by any Award this Board may make.

Many Awards have been cited from the various Divisions of the National Railroad Adjustment Board, as well as decisions of our Federal Courts, covering the matter of failure to notify the parties, either employe or employees, whose interests may be adversely affected.

It is therefore the opinion of the Board, that before a proper Award may be written, that this matter be held in abeyance, until such time as the employe Mrs. Ellen Kelly, can be properly notified of the pendency of this matter, and given an opportunity to protect her rights of seniority.

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 Mrs. Ellen Kelly should be notified of the pendency of this claim and given an opportunity to appear before the Board in accordance with the foregoing Opinion.

AWARD

Claim held in abeyance in accordance with the Findings and Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of June, 1953.