

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

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

GEORGIA & FLORIDA RAILROAD

ALFRED W. JONES, RECEIVER

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that,

(1) The Carrier violated the rules of the Clerks' Agreement, as hereinafter stipulated, when, on December 7, 1954, it declined and refused to permit Mrs. Betty W. Pennington, seniority date November 21, 1951, Clerk, Augusta, Georgia Freight Agency, to return to the service of the Company, after leave of absence due to physical disability account childbirth and that therefore,

(2) Mrs. Betty W. Pennington shall now be restored to service with all her rights unimpaired and paid for all time lost since her arbitrary dismissal from the service as of December 7, 1954.

EMPLOYEES' STATEMENT OF FACTS: Prior to July 15, 1953, there was no rules agreement on the Georgia and Florida Railroad covering the clerical and related employees, however, Management, according to our information, granted leaves of absence to its female employees for childbirth in accordance with the practice prevailing on most other railroads in this area, i. e., they were given such leave as might be necessary and would return to work when they were physically able to do so. This matter was not discussed in the negotiations leading to the Clerks' Agreement which became effective July 15, 1953.

Under date of April 14, 1954, Mrs. Betty W. Pennington, Bill Clerk, Augusta, Georgia Freight Agency, addressed a letter to her immediate superior officer, Mr. L. L. Terry, General Agent, requesting a leave of absence in accordance with Rule 28, paragraph (a) and this leave was desired account approaching childbirth and copy of this letter is hereto attached and identified as Employees' Exhibit No. 1.

The above requested leave was granted, but in the meantime Superintendent Transportation, Mr. H. N. Molton, wrote the Vice General Chairman, Mr. F. C. Temples and the undersigned asking concurrence and copy of Mr. Molton's letter is hereto attached and identified as Employees' Exhibit No. 2.

case the leave will be extended to include such delay. It is understood that in case where the employe is delayed in reporting and a means of communication is available, the employe will advise his superior officer of such delay and the cause thereof.

When Mrs. Pennington failed to report for duty at the expiration of leave of absence or to advise her superior officer of such delay and the cause thereof, she forfeited her seniority rights in accordance with Paragraph (c) Rule 28. There was daily mail service between Mrs. Pennington's home and the place of her employment; also, there was a telephone in the home where Mrs. Pennington lived at that time. Had she been unable at the time to notify her superior officer, she could have had her husband or another member of her family notify him. This was not done and on August 31, 1954, seven days after her leave expired, she appeared in person before Mr. L. L. Terry, General Agent, Augusta, Georgia, her superior officer and stated that she was sorry that she had let the time lapse and gave as her reason that she had been so busy with her two babies.

Had we granted Mrs. Pennington her request of August 31, 1954, (see Exhibit No. 14 attached hereto) for an additional leave of absence of thirty (30) days to become effective, retroactive to August 24, 1954, allowing her seniority to be reinstated, we would have violated the aforementioned agreement and would be subject to a monetary claim from each employe affected by our violation of said agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was an Agency Clerk at the Augusta, Georgia, Freight Station, holding a seniority date of November 21, 1951. Having become pregnant, she requested a 30-day leave of absence on April 14, 1954, to take effect May 24, 1954. The leave was granted. On June 20 she made written request for a 30-day extension effective June 24, which was granted. On July 20 she again made request for a 30-day extension effective July 24, expressly stating in her letter that the leave "should expire August 24, 1954." This extension was also granted, the letter expressly stating that the leave "will expire August 24, 1954."

Claimant made no further request until August 31, when she requested extension to be granted retroactively to August 24. She gave no reason for failure to make the application prior to August 24 except that she had been busy and had allowed the time to slip by her. The Carrier took the position that her seniority had been automatically terminated on August 24 under the terms of Rule 28(c), and that she was no longer an employe.

Rule 28(c) reads:

"An employe who fails to report for duty at the expiration of leave of absence will forfeit his seniority rights, except when failure to report on time is the result of unavoidable delay, in which case the leave will be extended to include such delay. It is understood that in case where the employe is delayed in reporting and a means of communication is available, the employe will advise his superior officer of such delay and the cause thereof."

The record is devoid of evidence from which we could find "unavoidable" delay. There can thus be no question that Claimant's seniority rights ended on August 24, unless the Brotherhood is correct in its contention that leave for physical disability is excepted from Rule 28(c). It bases this contention on Rule 28(a), which reads:

"When the requirements of the service will permit, employes, on request, will be granted leave of absence not to exceed thirty (30) days, with privilege of renewal. Except for physical disability or as provided in Rule 29, leave of absence in excess of ninety (90) days in any twelve (12) month period shall not be granted unless

by agreement between the Management and the duly accredited representatives of the employees."

The Brotherhood argues that paragraph (c) must be read in connection with paragraph (a), and that the phrase "except for physical disability" in (a) therefore is to be read into paragraph (c).

We do not so read the Rule. Of course, all parts of the Rule are to be read together when necessary to establish the meaning of all the parts. So far we agree with the argument. But the phrase "except for physical disability", by the clear meaning of the sentence in which it is used, applies only to the limitation on the number of extensions of leave or the number of separate leaves in any twelve month period. It clearly does not have the effect contended for by the Brotherhood.

It is not within our power to amend the Agreement.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September, 1957.