Award No. 9830
Docket No. CL-9208

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, 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 Rules Agreement, effective May 1, 1942, except as amended, when it failed to allow eight hours pay to Mrs. Mary S. Lafferty, Clerk, Ticket Sales and Service Bureau, 30th Street Station, Philadelphia, Pa., former Philadelphia Terminal Division, for Saturday, March 26. 1953.

(b) The Claimant, Mary S. Lafferty, should be allowed one hour and fifty minutes pay for Saturday, March 26, 1955, which represents the difference between the time actually worked on that date and eight hours pay to which she was entitled. (Docket E-1052)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes 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, except as amended, covering Clerical, Other Office, Station and Storehouse Employes 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, Mrs. Mary S. Lafferty, is the incumbent of a regular clerical position, Ticket Sales and Service Bureau, 30th Street Station, Philadelphia, Pa., former Philadelphia Terminal Division. She has a seniority date on the seniority roster of the former Philadelphia Terminal Division in Group 1 as of July 26, 1943.

not be revised or expanded by the unilateral action of one of the parties or by an Award of your Honorable Board, it is clear that a denial award should be entered in this case.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employes in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has established that there has been no violation of the applicable Agreement in the instant case and that the Claimant is not entitled to the compensation which she claims.

Therefore, the Carrier respectfully submits that your Honorable Board should deny the claim of the Employes in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

All data contained herein have been presented to the employe involved or to her duly authorized representative.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: Claimant Mary S. Lafferty holds a regular clerical position, Ticket Sales and Service Bureau, 30th Street Station, Philadelphia. On March 26, 1955, she requested permission of the Assistant Agent to remove her uniform coat because she was uncomfortably warm. The supervisor advised her that he did not feel that it was so warm as to make the wearing of coats uncomfortable and he could not grant the request unless all the employes in the office would agree to remove their coats. Claimant thought this unreasonable. Soon thereafter she complained of feeling ill. She asked to be relieved one hour and fifty minutes before the completion of her tour of duty (7:45 A. M. to 4:45 P. M.) to go home. This request was granted. When she failed to receive full eight hours' pay for the March 26th date, the present claim was filed.

Rule 4-A-3 of the parties' Agreement provides that:

> "The working days per week for regularly assigned employes shall not be reduced below five unless agreed to by the Management and the General Chairman, except that this number may be reduced in a week in which holidays occur by the number of such holidays. This rule (4-A-3) does not prohibit the abolition of a position at any time."

The Organization calls our attention to certain practices commonly observed on this Carrier's property:

> ". . . Surely the Carrier will not deny that there are numerous instances at this location and elsewhere over the Carrier's System that an employe becomes ill during a tour of duty, that such employe may be permitted to leave his work to lie down for a short time, or to leave his work and go to the medical examiner for attention such as a sedative, an aspirin, a cold shot, etc., and that such employe may later be able to resume and complete his tour of duty without loss in pay . . ."

Because of the language of Rule 4-A-3 and this practice of giving employes temporary breaks such as those cited above, Claimant insists that she is entitled to pay for a full day's work on March 26, 1955.

The guarantee rule requires only that the Carrier provide employment for the stipulated period. It does not require that an employe who is not ready and willing to work be paid for time away from the job. In this case Claimant elected to leave her post. She was not sent home and denied an opportunity to complete her tour of duty. Had she been released at the Carrier's suggestion, rather than her own, she would have had a more valid claim than that which is now before us. See Awards 4750, 6180, and 6691.

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 the Rules Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.