

Award No. 13225

Docket No. CL-13253

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL HOSPITAL DEPARTMENT

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5169) that:

(1) The Illinois Central Hospital Department violated the rules of the Agreement between the parties when on October 2, 1961, it refused to permit Patricia A. Javor to continue on her position of Clerk-Typist.

(2) Patricia A. Javor shall be restored to her position of Clerk-Typist with seniority rights and all benefits and privileges due her under the Agreement.

(3) Patricia A. Javor shall now be compensated a day's pay, \$16.64 per day, for October 2, 1961 and for each day thereafter until she is restored to her position.

EMPLOYEES' STATEMENT OF FACTS: Prior to October 2, 1961, Miss Patricia A. Javor was employed as a Clerk-Typist in the X-Ray Department of the Illinois Central Hospital Department, Chicago, Illinois. Prior to September 11, 1961, Miss Javor requested a six months' leave of absence in order that she might join her parents in Africa. Before her request was considered by Hospital Administrator J. F. Vanerio, Miss Javor notified Superintendent Pearl Baker that her request for a visa was declined and a leave of absence was not necessary.

On or about September 17, 1961, Miss Javor requested a leave of absence to enter school and her request was denied by Superintendent Pearl Baker. Miss Javor then tendered her resignation to become effective October 1, 1961. Miss Javor's letter of resignation was not officially acknowledged by Management.

On September 27, 1961, Miss Javor addressed a letter to Doctor R. Lough, Superintendent Pearl Baker and Hospital Administrator J. F. Vanerio wherein she withdrew her letter of resignation as is evidenced by Employees' Exhibit No. 1. Miss Javor's letter withdrawing her resignation was not officially acknowledged by management.

volved in Third Division Award 4195, where an employe was reinstated by a Carrier, after dismissal, with seniority rights unimpaired. It was held in the Award that:

"... When Johnson's dismissal was put into effect, his employment with the Carrier was completely severed. Other employes as a result of the dismissal had rights accrue to them that could not be ignored by the Carrier. The additional rights which accrue to an employe when one senior to him leaves the service of the Carrier arise by virtue of contract provisions and one party thereto cannot properly infringe upon such rights thus acquired unless the contract so provides. Awards 1243, 1419, 2093 . . .

Also in support, refer to Third Division Award 4264 quoted above.

In conclusion, the Hospital Department submits that the Claimant relinquished all rights and privileges with the Hospital Department under the Agreement. Therefore, not only should the claim be dismissed as pointed out above, it is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in this case had first submitted to the appropriate authority, a request for a six month leave of absence to become effective on October 1, 1961. Before this application could be processed, it was withdrawn for reasons not material to this dispute. The original request was made on September 2, 1961. On or about September 17, 1961, the Claimant asked for a leave of absence for the purpose of attending school. She was informed that it was contrary to Management policy to grant a leave of absence for such a reason. On September 18, 1961, she submitted a written resignation to become effective October 1, 1961. On September 27, 1961, she wrote another letter stating that she wished to withdraw her resignation and continue in her job.

The resignation and the withdrawal letter were never officially acknowledged in writing by the Management, but the record indicates that she was orally informed of the acceptance of her resignation on September 28, 1961, the day after she submitted her withdrawal letter. She reported for work on October 2, 1961, and was informed that since her resignation had been accepted, her services were no longer required; that her position had been bulletined in accordance with the Agreement and assigned to another employe.

A review of the record in this case reveals that apparently as a result of the Claimants' original request for a leave of absence, (subsequently withdrawn) her position was bulletined on September 11, 1961 and assigned to another employe on September 13, 1961. The bulletin was issued 21 days before the Claimant was due to go on leave of absence and assigned to another employe 19 days before Claimant was due to leave the position for a period of six months on October 1, 1961. Hence, the assignment of the position to another employe was made on September 13, 1961, four days before it was known that Claimant would not go on leave and five days before she tendered her resignation, to be effective October 1, 1961. It appears therefore, that the position was bulletined and assigned, not because of Claimant's resignation, but because of her request for a leave of absence. The employe assigned the position on September 13, 1961 assumed the duties thereof on October 2, 1961. If the Claimant had not tendered her resignation, she would have continued on her position and the bulletins and assignment would have been cancelled.

The basic issue to be decided in this case, simply stated, is whether or not

the employee has the right to withdraw her resignation before the effective date thereof. She remained on her position all during the month of September right up to the effective date of her resignation. There are no provisions of the contract dealing specifically either with the tender or withdrawal of resignations.

The original letter of resignation was not to be effective until October 1, 1961. She was still an employee from September 18th with certain rights still attached to her position and to her as the incumbent. The letter of resignation was not to be effective the date of submission. It was, as evidenced by the plainness and conciseness of the language used, an intent to resign "in future." The record in this case is clear that the minds of the parties had never met, and that in effect there was never any mutuality of Agreement that the Claimant would leave the Carrier's employ on October 1, 1961. The Claimant is entitled to the position by virtue of her seniority, since her purported resignation never became effective under the facts of this case. Hence her rights under the collective bargaining Agreement remain untouched. The Management violated the Agreement in refusing to permit the Claimant to work the position on and after October 2, 1961.

The appropriate remedy in this case is based on the principle well established by many other awards of this Board, that the Claimant, because of this violation, should be made whole. The monetary award therefore, will be reduced by the earnings of the Claimant in other employment she may have acquired subsequent to the date in question.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

AWARD

Claim No. 1 sustained.

Claim No. 2 sustained.

Claim No. 3 sustained as contained in opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January, 1965.