

Award No. 13465
Docket No. CL-13531

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY
(System Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5208) that:

(1) The Carrier violated the current Clerks' Agreement and acted in an arbitrary and capricious manner when on April 24, 1961, it removed Miss A. C. Walsh from her regularly assigned position of Stenographer in the office of Supervisor of Car Service, Portland, Oregon.

(2) The Carrier shall now be required to restore Miss Walsh to her regular assigned position of Stenographer in the office of Supervisor of Car Service and compensate her a day's pay at the established rate of said position for each day on after April 25, 1961, that she has been withheld from the position.

EMPLOYEES' STATEMENT OF FACTS: Employee Walsh has clerical seniority as of April 27, 1942. She exercised her seniority, displacing a junior employ on the position of stenographer in the office of Supervisor of Car Service, in December, 1957, and was regularly assigned that position to and including April 24, 1961. Duties as advertised in Superintendent Monahan's Bulletin No. 14, dated April 11, 1957, were: "Duties - taking and transcribing dictation, prepare and type various reports and other duties as assigned." Prior to this position Employee Walsh had successfully completed duties of similar steno-clerk and stenographer position for 15½ years.

On April 24, 1961, Supervisor of Car Service R. P. Jeffrey advised Employee Walsh that she was being disqualified. Hearing was requested as provided for in Rule 34, Unjust Treatment, and held on April 27, 1961, by Assistant Superintendent F. S. Barlow, Jr.

On May 4, 1961, Superintendent J. L. Monahan advised that he found no cause to change the action of Mr. R. P. Jeffrey disqualifying Employee Walsh from her stenographic position.

OPINION OF BOARD: Miss A. C. Walsh has clerical seniority as of April 27, 1942. On December 26, 1957 she became a stenographer in the office of the Supervisor of Car Service with the following advertised duties:

"Duties—taking and transcribing dictation, prepare and type various reports and other duties as assigned."

On April 5, 1961 the Supervisor of Car Service advised the Claimant that she would be required to prepare a daily CS-37 Report as a part of her regular duties. Although preparation of this commodity report had been done by the previous occupant of this position, Miss Walsh had not been asked to do it during the first 3½ years she occupied the instant position. She had, however, been required to type such reports after they had been prepared by the general clerk. From April 6 until April 24, 1961 she endeavored to prepare the report daily but, with two exceptions, was unable to do so without assistance from others. She devoted far greater time to this preparation than did those who successfully prepared the report before or after the Claimant.

On April 21, 1961, she was advised to report to work one half hour earlier than usual to give her more uninterrupted time to prepare the report. On April 24, 1961, after the supervisor discovered an error in three minutes that she had been unable to locate for two hours, she was advised that she was being disqualified for the position. A hearing was subsequently held at which the disqualification was sustained.

Thereafter, she was recalled to a steno-clerk vacancy in the Chief Dispatcher's office on May 5, 1961, took a 14-day vacation, and later was granted an extended leave of absence until September 6, 1961, when she was returned to the extra Board. Shortly thereafter she requested an indefinite leave of absence to accept employment as a secondary school teacher, and on June 30, 1962, voluntarily resigned from service. During this period she did not bid into any of the 11 bulletined positions which became available for which she had appropriate seniority.

The Organization filed the instant claim alleging that the Carrier acted in an arbitrary and capricious manner in removing Claimant Walsh from her stenographic position. It asserts that Miss Walsh had demonstrated her ability in the position of stenographer prior to the addition of the report preparation; that this constituted a substantial innovation in the job for which she was entitled to a thirty day qualification period as suggested by Rule 16; that the Carrier refused to give her a reasonable period of time to master completion of the CS-37 Report; and that the Carrier used the device of introducing the report preparation as a subterfuge to bring about the Claimant's removal from the position.

The Carrier contends that preparation of the CS-37 was an integral part of the position into which the Claimant moved even though it was not being done by the position at that time; and that its later reintroduction did not bring about a re-opening of the 30 day qualification period cited in Rule 16. It emphasizes that it did grant the Claimant a three week period in which she should have been able to master the report preparation, particularly since she had been typing them for three years and that since she failed to do so, and took an inordinate amount of time in her efforts, the Carrier had no alternative but to hold her disqualified. Her callous attitude toward her work and responsibilities is indicated by the fact that she made no effort to bid into available positions after being removed from the one in dispute, the Carrier concludes.

In this case the facts are clear that preparation of the CS-37 Report had been an integral task of the position under discussion, but that it had not been required of the Claimant until more than three years after she had qualified for the position. Thus, in view of the Carrier's undisputed right to assign and rearrange tasks within an individual position, we must decide whether it acted properly in holding the Claimant disqualified nearly three weeks after introducing the preparation of the CS-37 Report into her job.

Rule 16 is explicit in allowing thirty days in which to qualify for an employee awarded bulletined positions. In this case the award of a bulletined position was made in 1957. There is nothing in this provision, or any others examined in the Agreement, which re-opens the 30 day qualifying period for a position whenever tasks within that position are reintroduced or rearranged. Since the Carrier has the right to make such adjustments within a position, extension of Rule 16 to require a new qualifying period for each such adjustment could well extend the qualifying period throughout the period of job tenure. If such was the intent of the parties, it is not so indicated in the Agreement; to read it into Rule 16 would constitute a rewriting of the Agreement, which is beyond our jurisdiction. The Company acted within its rights in not granting a thirty day qualifying period in this case.

What the Carrier did do was permit a period of more than two weeks for the Claimant to adapt to the new task. We find such a period to be reasonable, particularly since the evidence indicates that her predecessor and successor on this job picked it up much more quickly, and since she had a good deal of familiarity with the Report from having typed it over the preceding three years. Accordingly, we find that the Carrier did not act arbitrarily and capriciously in removing her from the job when she failed after such reasonable trial period to learn to complete the report alone, or even to complete it rapidly enough to permit her to give attention to the other tasks of the position. It is true that the work load of the position had increased appreciably in recent times, but it is likewise clear from the testimony at the hearing that other employees have been able to master its preparation.

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 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 Agreement was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By ORDER OF THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April 1965.