



Award No. 14867
Docket No. CL-16059

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
WESTERN WEIGHING AND INSPECTION BUREAU**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5946) that:

- (1) The Bureau violated the Schedule Agreement effective September 1, 1949, when it arbitrarily refused to permit Virgil E. Burks, Serviceman, Des Moines, Iowa, to return to service on April 5, 1965.
- (2) Serviceman Virgil E. Burks shall now be returned to the service of the Bureau with seniority and all other rights unimpaired.
- (3) Serviceman Virgil E. Burks shall now be compensated for all wage and other losses sustained account the Bureau's refusal to permit him to return to service on April 5, 1965.
- (4) Serviceman Virgil E. Burks' record shall be cleared of all alleged charges or allegations which may have been recorded thereon as the result of the violation named herein.

EMPLOYEES' STATEMENT OF FACTS: Serviceman Virgil E. Burks, age 25, seniority date July 24, 1957, was employed by the Bureau from July 24, 1957 in the Grain Door Department at Des Moines, Iowa, until the instant dispute arose on April 1, 1965. Due to insufficient work at Des Moines, Iowa, in the years 1961 and 1962, he was placed on the furlough list, but has been in continuous Bureau employment since that time.

On April 1, 1965, Claimant Burks had the experience of his small two year old daughter being involved in a home accident. He took his daughter to the out-patient department of the Des Moines General Hospital for treatment of her injury, arriving there approximately at 8:00 A. M. Claimant Burks then proceeded to go to work arriving on the job about 9:30 A. M., then requested the balance of the day off duty for the purpose of being with his daughter. His Foreman or Supervisor would not allow him to take the time off claiming there was too much work to be done and he could not be spared.

Claimant Burks performed work for a short time and coopered two rail box cars with paper doors for bulk grain loading. While doing so he became

Bureau's Exhibit 18 is a letter dated May 21, 1965 from Agent Hart to District Manager Suess, outlining the results of Agent Hart's investigation with Dr. E. F. Leininger concerning his treatment of Mr. Burks' daughter, Patty Lou, at 8:00 A. M. on April 1, 1965.

The General Chairman, after receiving District Manager Suess' letter of June 4, 1965, appealed the subject to Assistant Manager R. C. Kniewel, with a two paragraph letter stating in part: "Please be advised our position is unchanged and consider this letter as an appeal from the decision of Mr. Suess." (See Bureau's Exhibit 19.) The General Chairman's letter of July 9, 1965, was answered, in turn, by Assistant Manager R. C. Kniewel, in which proper exception was taken as to the manner in which the Organization had filed their appeal, as a violation of the Railway Labor Act. Furthermore, that exception was taken to the claim being invalid and faulty, as filed. (Bureau's Exhibit 20.)

In a series of conferences held with representatives of the Grand Lodge on September 10 and September 23, 1965, as well as the newly appointed Acting Chairman, D. W. Beat, the Brotherhood representatives requested consideration be shown by the Bureau to Mr. V. E. Burks, in first restoring his seniority rights but without compensation for the time that he had severed his employe relationship with the Bureau. The Brotherhood representatives were informed that the Bureau would make a further investigation at Des Moines to determine whether or not Mr. V. E. Burks should be given consideration in restoring his seniority, as requested. Accordingly, Bureau District Inspector, R. E. Seiberlich, at the request of Assistant Manager R. C. Kniewel, conducted such an investigation at Des Moines, Iowa, the results of which are shown in Bureau's Exhibit 21.

Bureau's Exhibit 21 was shown to the Brotherhood representatives on September 28, 1965 and they were informed that a review of Mr. Burks' personal file, as well as the investigation conducted by District Inspector R. E. Seiberlich, developed that consideration in restoring Mr. V. E. Burks' seniority to him should not be extended. Upon hearing this, the Brotherhood representatives then made an additional offer on September 28, 1965 to restore Mr. V. E. Burks' seniority to him, but as a furloughed employe until such time as a position was available to him at a location other than Des Moines, Iowa in the Northwestern District.

The Bureau declined this request and Bureau's Exhibit 22 is our letter to the General Chairman dated October 15, 1965, reiterating our previous objections and exceptions to the manner which this had been progressed on Bureau property. Furthermore, his appeal was declined as faulty and as being completely without merit.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was a Serviceman in the Grain Door Department of the Bureau with hours of assignment between 7:30 A. M. to 4:00 P. M. On April 1, 1965, Claimant reported to work a few minutes after 9:00 A. M. with the explanation that he had been required to take his daughter to the hospital for treatment because of an injury. The foreman accepted the explanation but required Claimant to go to work during the balance of the workday. At approximately 10:00 A. M. Claimant left his position without authority and proceeded to the office of the Bureau Agent at Des Moines, Iowa,

where he took his union book from his wallet, placed it on the desk of a Bureau Clerk with the following request:

"Turn this in for me, I quit."

Immediately thereafter, the Bureau Clerk telephoned the Grain Door Department Foreman and informed him of Claimant's actions and verbal resignation. Said foreman by telephone notified the Chief Clerk in the District Office located at Minneapolis, Minnesota and requested authority to post a bulletin, advertising a vacancy in the position formerly held by Claimant.

The authority was granted and such a bulletin was issued at approximately 12:00 o'clock Noon on April 1, 1965. Claimant returned later the same day and was advised by the foreman that he would have to contact the District Manager in Minneapolis concerning his desire to rescind his resignation. Apparently, Claimant failed to do so, but he returned the following day with a written note stating that he would return to work on Monday next and that "I did not quit my job."

On April 2, 1965, the General Chairman addressed a letter to the Bureau asserting that Claimant was "automatically" on a leave of absence, which contention was thereafter rejected by the Bureau. The initial claim was filed with the District Manager of the Bureau on May 3, 1965 and declined by the Bureau on June 4, 1965. Appeal was taken to the highest officer of the Bureau by Petitioner on July 9, 1965, which was subsequently declined by Bureau. Conferences were held in further effort to resolve the dispute without success prior to submission to the Board.

Petitioner's contention that Claimant was improperly held out of service by Bureau without a hearing or investigation is bottomed on the premise that his oral resignation on April 1, 1965 was conditional and subject to acceptance in writing by the Bureau. However, Petitioner has offered no probative evidence in support of its position. Rule 3, paragraph (g) of the applicable agreement between the parties provides as follows:

"Employee voluntarily leaving the service will forfeit all seniority rights. If they re-enter will be considered as new employees."

The record discloses that Claimant resigned in the presence of witnesses and in addition thereto turned in his union card. It is of no significance under the controlling language of the agreement between the parties that the resignation was verbal as long as it was voluntary. (Awards 10404, 10565)

The Bureau accepted Claimant's oral resignation before he reconsidered his action and sought to rescind it. No charges were made against Claimant and no question of discipline is involved. Claimant, in effect, quit his job and voluntarily severed his relationship as an employee of the Bureau.

We find no merit in Petitioner's assertion that Claimant should have been considered on leave of absence under Rule 10(f) of the controlling agreement inasmuch as it is not applicable to a situation in which an employee reports for work and subsequently leaves without permission.

Claimant left his work without authority to do so and voluntarily submitted his resignation which was immediately accepted by the Bureau. He

no longer retained any rights under the Agreement, including the right to an investigation. Accordingly, the claim must be denied.

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 no violation of the Agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of October 1966.