

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6204) that:

1. Carrier violated the rules of the Clerks' Agreement when it refused to permit employe Sally Butler to exercise seniority to a position bulletined while she was on leave of absence.
2. Carrier shall compensate employe Sally Butler a day's pay (8 hours) at the rate of Steno-Clerk Position 7420 at Harlowton, Montana for Friday, December 24, 1965, and for each work day (Monday through Friday) of Position 7420 thereafter that she is withheld from Position 7420.
3. Carrier shall credit Employe Sally Butler with six (6) additional qualifying days, i.e., December 24, 27, 28, 29, 30 and 31, 1965 for vacation purposes.

EMPLOYEES' STATEMENT OF FACTS: Prior to February 5, 1964, employe Sally Butler, who has a clerical seniority date of November 23, 1943 and non-clerical date of January 16, 1946 in Seniority District No. 44, was the regularly assigned occupant of Trainmaster's Clerk Position No. 7405 at Deer Lodge, Montana.

On January 22, 1964, employe Butler addressed the following letter to Superintendent M. T. Sevedge at Deer Lodge, Montana:

"I hereby request a 60 days leave of absence effective 5:00 P. M., February 4, 1964."

On February 4, 1964 employe Butler addressed the following letter to Superintendent Sevedge, Deer Lodge, Montana:

"Account sickness I hereby request a 60 days leave of absence effective 5:00 P. M., February 4, 1964."

Claim was filed with Superintendent Plattenberger under date of January 4, 1966 and was declined by him in his letter of February 21, 1966 on the basis that employee Butler was a furloughed employee and therefore was not entitled to exercise seniority. Copy of that letter is submitted as Employees' Exhibit K.

The seniority roster issued July 9, 1964 for District No. 44 shows two employees with seniority dates established subsequent to February 4, 1964. The seniority roster issued January 1965 shows seven employees with seniority dates established during the period February 17, 1964 and December 21, 1964. The seniority roster issued July 1965 shows seven employees with seniority dates established during the period February 17, 1964 and January 1, 1965. The seniority roster issued January 1966 shows 9 employees with seniority dates established during the period February 17, 1964 and November 22, 1965.

In all, a total of ten employees established seniority in District No. 44 during the period February 17, 1964 through November 22, 1965.

Rule 12 (d) requires that furloughed employees be recalled in the order of their seniority when forces are increased or vacancies occur.

The fact that ten new employees were brought into service during the period employee Butler was absent, without recalling employee Butler and without objection on her part, shows conclusively that both the Carrier and employee Butler were in accord in their understanding that she was on leave of absence and was not a furloughed employee subject to recall as provided in Rule 12(d).

The claim was appealed to Mr. S. W. Amour, Vice President-Labor Relations from the decision of Superintendent Plattenberger on April 14, 1966 and was declined by him in his letter of May 24, 1966.

Discussion of the claim during conference on November 4, 1966 produced no settlement. The time limits for submission of this case to the Board were extended by agreement between the parties, for a period of 30 days, or until March 24, 1967.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Claimant Butler, for reasons that will be fully explained in "Carrier's Position," was **not** entitled to exercise her seniority to displace the regularly assigned occupant of Steno-Clerk Position No. 7420 at Harlowton, Montana effective December 24, 1965, therefore, there occurred no violation of the Clerks' Agreement when she was not allowed to do so.

Attached hereto as Carrier's Exhibit A is copy of letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. H. C. Hopper, General Chairman, under date of May 24, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to February 4, 1964, the Claimant occupied a position of Trainmaster's clerk at Deer Lodge, Montana. The record discloses that due to personal sickness the Claimant advised Carrier that she was relinquishing her assignment and requested a leave of absence. The record further discloses that she was granted a leave of absence effective February 4, 1964, and was granted seven subsequent leaves of absence, consequently the last being a ninety (90) day leave of absence effective October 5, 1965. In December, 1965, the Claimant desired to return to active service and so notified the Carrier that she wished to displace on Position No. 7420 which had

been bulletined during her absence. The Carrier advised Claimant to the effect that since she had voluntarily relinquished her assignment effective February 4, 1964, she was a furloughed employee and therefore not entitled to displace on this position. The Employees, however, have argued that Claimant was on a bona fide leave of absence, therefore pursuant to Rule 23 (e) of the controlling agreement should have been allowed to displace on Position No. 7420. Rule 23 (e) reads as follows:

"RULE 23. LEAVE OF ABSENCE
(VOLUNTARY ABSENCE FROM DUTY)

(e) An employee returning after leave of absence may return to his former position providing it has not been abolished or senior employee has not exercised displacement rights thereon; or may, upon return or within fifteen (15) days thereafter, exercise seniority rights to any position bulletined during such absence, except, he may not exercise seniority rights to any position bulletined temporarily as a result of his absence from service. In the event the employee's former position has been abolished or senior employee has exercised displacement rights thereon, the returning employee will be governed by the provisions of Rule 12, and will have the privilege of exercising seniority rights over junior employees if such rights are exercised within fifteen (15) days after return. Employees displaced by his return may exercise their seniority in the same manner."

Based on the record in this case we can only come to the conclusion that Claimant was on a bona fide leave of absence and should have been allowed to displace on Position No. 7420 effective December 24, 1965. We will sustain the claim for the period December 24, 1965, to March 6, 1966, since the record also discloses that on March 6, 1966, Claimant made herself unavailable for service, *temporary or permanent, pursuant to Rule 25 (a)*.

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 Carrier violated the Agreement.

AWARD

Claim sustained to the extent indicated in the Findings and Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1968.

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