



**Award Number 17968**

**Docket Number CL-18357**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Arthur W. Devine, Referee**

**PARTIES TO DISPUTE:**

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

**DETROIT, TOLEDO AND Ironton RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood (GL-6635) that:

1. The Carrier violated the terms of the current Clerks' Agreement and supplements thereto on May 29, 1968, when it dismissed Mrs. C. L. Parks from the service of the Company; without complying with the current Rules Agreement provisions.
2. That Mrs. C. L. Parks shall be restored to service, with full seniority rights and all other rights restored and compensated at rate of \$24.62 per day (subject to all subsequent increases) effective May 29, 1968, and continuing thereafter until February 20, 1969.
3. The Carrier shall be required additionally to compensate Mrs. C. L. Parks for all monetary losses sustained for work and/or compensation she would have been entitled to and/or perform, had she not been improperly denied her rights to stay in service, and
4. Mrs. Parks shall be additionally compensated at the legal Michigan State percentage interest rate on all monies and/or benefits which would have been paid her effective May 29, 1968, and continuing thereafter until this claim is adjusted.

**EMPLOYEE'S STATEMENT OF FACTS:** C. L. Parks was first employed by this Carrier at their Wyndotte Station, Wyndotte, Michigan, February 6, 1968, as an employee in the Station office, as a Bill Clerk, and on May 29, 1968, she was being utilized to assist and learn vacation work as well as working on work that had been permitted by the Carrier to accumulate. She was hired by the then Supervisor of Station, Mr. W. L. Larson.

On May 29, 1968, Mrs. Parks was notified in writing by Mr. George B. Smith, Manager Data Origination and Quality Control that "... your employment with the D T & I R R will be terminated as of 5:00 P.M., May 31, 1968."

For your ready reference, copies of the entire exchange of correspondence, on this claim, between the representatives of the Carrier and the

Messrs. Smith and Nemcheck confirmed an understanding per a letter agreement dated January 28, 1969. Subject understanding grew out of the November 7, 1968 conference concerning the claim. Mr. O'Brien also confirmed the conference to Mr. Turley in a letter dated January 30, 1969. See Exhibits I.

There was further correspondence concerning the claim to Mrs. Parks from Mr. Smith and an understanding between Messrs. Nemcheck and Smith. See Exhibits J.

On May 22, 1969, the Brotherhood tendered notice to Mr. S. H. Schulty, Executive Secretary, Third Division, National Railroad Adjustment Board of its intent to have the dispute resolved by the Board. See Exhibit K.

In a letter to Mr. Turley dated May 23, 1969 and an affidavit relative To Mrs. Parks' employment, Mr. O'Brien confirmed conferences concerning the claim. See Exhibit L.

On July 1, 1969 Mr. OB'rien supplemented his May 23, 1969 letter to Mr. Turley with affidavits connected with the claim from Messrs. Hughes, Wright and Smith and directed his attention to the fact that Mrs. Parks resigned on May 28, 1969. See Carrier's Exhibits M.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** Claimant was originally employed by Carrier on February 6, 1968 to perform overflow work under a Memorandum of Understanding that provided for the employment of individuals for short intervals of fluctuating work that cannot be handled by regular forces. Said Memorandum also provided that such individuals shall not establish seniority and shall not be worked with any degree of regularity. After having been in service for 115 days the Carrier, on May 29, 1968, notified Claimant that her employment was being terminated as of 5:00 P.M., May 31, 1968. As a result of such action by Carrier the Organization submitted subject claim alleging a violation of Rule 16 of the Agreement which, insofar as here pertinent, reads as follows:

"An employee who has been in the service more than sixty (60) days or whose application has been formally approved, shall not be disciplined or discharged without investigation."

Following several conferences the Carrier and Organization reached agreement that Claimant would be hired as a permanent employee providing she worked full time. She resumed work on January 14, 1969 and resigned May 28, 1969.

We agree with the position of the Organization that Carrier violated Rule 16 of the Agreement by terminating Claimant's services without investigation. Accordingly paragraph 1 of the Statement of Claim is sustained.

Concerning that portion of Paragraph 2 of the Statement of Claim that requests the restoration of seniority and other rights it is to be noted that Claimant voluntarily resigned from the service on May 28, 1969. This question has therefore become moot and this portion of the claim will therefore be dismissed.

The remaining portion of Paragraph 2 requests compensation for each day from May 29, 1968 until February 20, 1969. The record indicates that during the time she was employed from Feb. 6 to May 31, 1968, Claimant did not work on a full time basis. Nothing in the record indicates that Claimant

would have worked full time if work was available, and nothing indicates that work existed for Claimant on each and every day for which claim is made. Her employment was not on a full time basis but was for fluctuating work that could not be handled by the regular forces. On this state of the record the claim for damages cannot be sustained and will be dismissed.

Paragraph 3 is also a claim for compensation and in some respects, at least, is a duplication of compensation requested in Paragraph 2. This portion of the claim will be dismissed for the same reasons as the claim for compensation in Paragraph 2.

Paragraph 4 of the Claim must also be dismissed in view of the claims for compensation being dismissed.

**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 violated to the extent shown in the Opinion.

#### A W A R D

Paragraph 1 of the Claim is sustained; Paragraphs 2, 3 and 4 are dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 4th day of June 1970.