

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19834**
Docket Number CL-19905

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(J. F. Nash and R. C. Haldeman, Trustees of the Property of
(Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood (GL-7134)
that:

(a) Carrier violated the Agreement between the parties effective May 1, 1955, as revised when it abolished all clerical positions fully covered under the Agreement and turned this work over to Yardmasters, and others not covered under the Agreement to perform at Manchester, New York, and

(b) **Due** to this action on the part of the Carrier clerical employes at Manchester, New York, had no place to go to obtain a position except Buffalo, New York, which is in excess of one hundred (100) miles away, and

(c) Due to Mrs. Maxine Tobey, not bidding in position at Buffalo, New York, Carrier removed her from the Buffalo Seniority District Roster, and

(d) Carrier shall now be required to restore Mrs. Maxine Tobey to the Buffalo Seniority District Roster, with seniority and any and all other rights unimpaired.

OPINION OF BOARD: The Organization's Claim is disputed by Carrier on a number of grounds. Initially, Carrier asserts that, in certain **part**, the claim before this Board is not the same as submitted to, **or** handled by, the Carrier on its property, and it cites precedent awards to urge this Board to dismiss. A review of the entire record appears to support that contention concerning Claims "(a)" and "(b)". In any event, the substance of Claim "(a)", (the basic assertion that the Agreement was violated by abolishing certain **positions** and transfer of work to non-covered employees) has been fully considered by **this** Board in Award 19833 and for the reasons stated therein, Claim "(a)" is dismissed.

Claim "(b)" is a statement dealing with available work and geographic distances. It appears that the Claim, in its precise form, may not have been considered on the property, but certain parts thereof **were** considered as they relate to Claims "(c)" and "(d)". In any event, for reasons stated below, elimination of Claim "(b)" from further consideration is not crucial to the dispute, because a consideration of Claims "(c)" and "(d)" are dispositive of the issues.

The Carrier concedes, in its Ex **Parte** Submission to this Board that Claims "(c)" and "(d)" are properly before **us** when it states:

"The only proper claim in this case is the alleged improper removal of Claimant from the Buffalo Seniority District Roster and request for restoration to such roster with seniority and other rights unimpaired."

On or about July 1, 1970, Carrier abolished certain positions at Manchester, New York. As a result, under the applicable rules, Claimant assumed a "furloughed" status.

On November 24, 1970, Carrier forwarded a letter to Claimant advising her that an assignment had occurred at "**Tifft**" Street (Buffalo, New York), and specified the days, hours and monthly pay rate. Further, the Carrier cautioned the Claimant that under Rule 19, she ran the risk of losing seniority if she failed to comply with said rule.

Claimant advised Carrier by letter dated December 2, 1970, that she received Carrier's notification on November 30, 1970 and in her letter, she specified a number of reasons why she refused to accept the **position** at **Tifft** street.

On December 7, 1970, Carrier advised Claimant that her **name was** removed from the seniority list and that she **was** considered out of service.

Certain items have been raised by the Organization which fail to materially assist the Board in its determination. It appears that in initial correspondence the Carrier cited an incorrect Rule to Claimant. Nonetheless, Claimant was not misled thereby, nor were her rights compromised. The Organization **next** asserts that an "agreement" existed, under the terms of which, Claimant and others similarly situated were not required, under any circumstance, to transfer to Buffalo. Carrier denied such an agreement, and the record remains unclear in that regard.

The Board is of the view that exploration of other contentions concerning relative seniority of people out of work, etc., are unnecessary because a determination of the issues rests upon the language of Rule **19(c)**.

Various Rules, **dealing** with seniority acquisition and retention, are cited, but Rule 19 appears to control.

Under Rule 19(a) an employee such **as** Claimant is considered as "**furloughed**" under the facts applicable to her in July, 1970. Under Rule 19(b) Claimants must file their addresses, and **advise of** changes of address. Rule 19(c) in pertinent part states:

"When forces are increased or vacancies occur, furloughed employees shall be recalled and required to return to service in the order of their seniority rights, except as otherwise provided in this rule..... **When** a bulletined new position or vacancy is not filled by an employee in service senior to a qualified employee who has protected his seniority as provided in this rule, the senior qualified furloughed employee will be called to fill the position. Furloughed employees failing to return to service within **seven** (7) days after being notified (by mail or telegram to the last address given) or give satisfactory reason for not doing so will be considered out of service (underscoring supplied).

The Carrier cites authorities which have upheld denials of seniority restoration. However, those cases dealt with a factual demonstration that the Claimants therein failed to comply with agreement requirements to return to service. This case rests upon the final fifteen (15) words of Rule 19(c).

Giving clear language **its** Literal meaning, the final sentence of Rule 19(c) clearly **states** that if an employee gives a "satisfactory" reason for not **returning** to service he or she will not be considered out of service. To rule otherwise would make the final **portion of** the rule a total nullity, and this Board is not prepared to rule that the parties included **meaningless** language in their contract.

The agreement is not clear **as** to who must be "satisfied" with the reason given. Clearly, the employee **may not** be the sole judge of what is "satisfactory." If such were the case, the language of the agreement is unduly confusing, because if the parties so intended it is questionable that they would **have** spoken in terms of "giving" satisfactory **reasons**. Instead, the language might reasonably be presumed to merely allow the employee to state an unwillingness to return to service.

A better construction suggests that, in the first instance, the Carrier determines if the reason given is "satisfactory." If a dispute arises in that regard, then this Board will test the reason, and make a determination, in each **case**, weighing the factors of the particular circumstance.

On December 2, 1970, Claimant, in response to the notification "compelling you to accept this assignment", noted that other employees on furlough were senior to her, referred to an alleged agreement which precluded a compelled move to Buffalo, New York, and with specific reference to Rule 19(c) stated asserted "satisfactory reasons." She advised:

- (1) Her husband was also furloughed (for quite a while); they had a **family** to support and could not afford to move to Buffalo at the time;
- (2) As far as **commuting**, the distance **was** 100 miles, each **way**;
- (3) She had small children at home which required paying a baby sitter at home, and that payment of a baby sitter for 11 hours per day, plus driving expenses were prohibitive;

(4) Taking a room in Buffalo would leave no one to take care of her family.

She also requested information as to whether the Company would pay for a move to Buffalo, pay commuting and driving expenses, and whether the Company was guaranteeing a permanent position, as that related to her children switching schools from time to time.

She concluded by stating that she desired to hold her seniority and remain on the roster and cover **all** work, short vacancies, vacations, etc., at her home terminal.

While the Board can speculate as to certain answers which might have been given to Claimant's reasons, the record discloses that Carrier refused to even acknowledge, let alone **comment** upon, her reasons.

In direct reply to Claimant's December 2, 1970 letter, Carrier, on December 7, 1970, commented on the alleged agreement regarding Manchester employees moving to Buffalo, and then concluded:

"Your reasons for not coming to Buffalo for **two** assignments at the present time which are held by junior employees, and not complying with Rule 19(b), Paragraph "C" (an improper agreement reference, discussed earlier) your **name** has been removed from the seniority list of the Lehigh Valley Railroad and you **are** considered out of service."

Obviously, certain words were inadvertently omitted from the letter because the sentence is incomplete. This Board cannot speculate as to the omitted words. Suffice it to state that the letter does not state **that** the personal reasons were not "satisfactory."

Similarly, the Carrier's March 19, 1971 Letter failed to comment upon the personal reasons advanced by Claimant.

The Carrier's May 25, 1971 letter stated that Claimant failed to "satisfactorily give reason", but does not specify in what manner the personal reasons were unsatisfactory.

Seniority is a significant employee right, and cannot be easily turned aside, and once acquired, should not be disturbed, except in accordance with the governing agreement. Rule 19(c) grants employees the right to refuse recalls upon the giving of a satisfactory reason for not returning to service. Claimer **gave** reasons. The Carrier never stated in specific terms wherein it felt that the Claimant's personal reasons were not satisfactory. For that reason, and because the Board feels that this Claimant made certain reasonable assertions of personal hardship by accepting the offered position, in this case, the **Board** finds

that Claimant gave Carrier satisfactory reasons for not returning to service. Accordingly, the Board finds that Claimant was removed from the Buffalo Seniority District Roster, and that the Carrier shall restore Claimant to the Buffalo Seniority District Roster, as of the date she was removed from that **roster** and considered out of service, and that her **seniority** and all other **rights** shall be unimpaired, and her **rights** shall be considered in the same manner as if she **had** not been removed from the roster and considered out of service.

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.

A W A R D

Claim (a) and **(b)** dismissed.

Claim (c) and **(d)** sustained to the extent and in the manner set forth in Opinion.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third **Division**

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, this 29th day of June 1973.