

NATIONAL RAILROAD **ADJUSTMENT** BOAW

**THIRD DIVISION**

Award Number 20672

Docket Number CL-20686

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship  
( Clerks., Freight Handlers, **Express** and  
( **Station** **Employees**  
PARTIES TO DISPUTE: (  
(Chicago, Milwaukee, St. Paul **and** Pacific Railroad  
( **Company**

**STATEMENT OF CLAIM:** **Claim** of the System **Committee** of the Brotherhood  
(GL-7514) that:

1. Carrier violated **and** continues to violate the **Clerks'**  
Rules Agreement when it unjustly treated employe N. L. **Cortopassi** by  
improperly **terminating** her seniority and dismissing her from Carrier  
service on January 25, 1973.

2. Carrier shall be required to restore employe N. L. **Corto-**  
**passi's** seniority rights unimpaired and compensate her a day's pay at  
the rate of her respective position for each day that she would have **been**  
entitled to be recalled under the provisions of **Rule 12(d)** from January  
25, 1973 and all subsequent dates until the violation is corrected; **rep-**  
**arations** to be determined by a joint check of the Carrier's records.

**OPINION OF BOARD:** The Claimant herein was a furloughed, unassigned  
employe on January 24, 1973 and governed by the pro-  
visions of Rule 12, "Reducing Forces," Paragraph (d) of which provides  
in part:

"When forces are increased or **unfilled** vacancies  
occur, furloughed **employees**, when available, shall be  
recalled and returned to service in the order of their  
seniority and **employees** shall be required to return when  
so called. Furloughed **employees** failing-to return to  
service for extra work when called and furloughed em-  
**ployes** failing to return to service for other than extra  
**work** within **seven** (7) days after being notified (by mail  
or telegram sent to the last address given) will be re-  
quired to give satisfactory reason for not doing **so**,  
otherwise they will terminate their seniority." (Em-  
phasis supplied)

In letter of January 25, 1973, Assistant Agent Mr. **Rebesco**  
advised Claimant as follows:

"For your failure to give a satisfactory reason for failing to report to serve for extra work when called on January 24, 1973.

'You have terminated all clerical seniority rights you have accrued in all clerical districts in which you have accrued these rights."

As a result, Claimant requested investigation under provision of **Rule** 22(g), contending she had been dismissed without the investigation required by **Rule** 22(a). Notwithstanding Carrier's defense on the property that no hearing was required under the circumstances, i.e., that Claimant had terminated her seniority rights by failing to respond for work, and failing to give satisfactory reason for not doing so, it nonetheless set a date for an investigation, which was held February 15, 1973. The decision rendered on February 23, 1973 was that Claimant's charge of unjust treatment was unsubstantiated and wholly without factual and/or schedule rule support.

The transcript of the investigation held February 15, 1973 (Carrier's Exhibit A) reveals that on January 24, 1973 the Claimant was telephoned to protect a vacant keypunch position, such call being made at **11:45** AM by the Chief Yard Clerk. That fact is not disputed; the conversation that obtained between Claimant and the Chief Yard Clerk and subsequently between Claimant and the Assistant Agent is disputed, however.

Claimant testified:

"I answered the phone and he told me that there was a job at 3:00 p.m. and he needed me to come in. I told him that I **would** if I could but I had been up all night and it wouldn't be fair for me to come into work and be as inaccurate as I would have been.\* At approximately 10 minutes later, Mr. **Rebesco** called me and he asked me why I was not going to come in. I told him that I had been up all night ill."

The Board is confronted with conflicting testimony, i.e., Claimant avers that she did in fact advise that she was ill, **which was the** reason she could not protect the keypunch position, whereas both the Chief Yard Clerk and the Assistant Agent testified that neither of them had been so advised. The Claimant, having been put on notice by the Carrier that her reasons for failing to report when called for duty under the provision of **Rule** 12(d) were unacceptable, had sufficient time (until February 15, 1973, the date of her requested hearing) to present to the Carrier proof of her illness as a condition of her continued employment. In light of the lack of such proof in the Record and the conflict in testimony at the investigation, we must conclude that this claimant did terminate her seniority rights under the provisions of **Rule** 12. Awards 5799 (Carter), 10404 (Mitchell), 12993 (Ball). The claim is 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

**The** Agreement was not violated.

A W A R D

**Claim** denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A.W. Paulsa  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1975.