Award No. 2636
Docket No. CL-2583

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway Clerks that the carrier violates the rules of the Clerks' Agreement when it required Mrs. Gwendolyn Sandstrom to enter into an individual Memorandum of Understanding as a condition to her continued employment with the Erie Railroad Company, and

That such individual Memorandum of Understanding constitutes a violation of Rules 1, 3, 50 and 58 of the Clerks' Agreement dated September 1, 1936, and

That the carrier shall now be required to cancel such Memorandum of Understanding and all others of similar nature signed by employing officer and employes or prospective employes of the Railroad Company.

EMPLOYES' STATEMENT OF FACTS: Mrs. Gwendolyn Sandstrom, nee Gwendolyn Davis, was employed by the Erie Railroad during 1925. Subsequent to her employment she married an individual in the armed forces of the United States Government, and as a result of her marriage, was required to sign a Memorandum of Understanding reading as follows:

> "I understand that the employment rule of the Company respecting female employes who marry is:
>
> "They will automatically go out of service when they marry.
>
> "I also understand that because of present war conditions and the resultant manpower shortage that the following rule will govern until the termination of the war:
>
> > 'Single women now in service, who marry while employed and desire to continue to work, may be retained in service without impairment of seniority rights but with the understanding that such retention is only for the period of the war at the end of which they will, upon request, resign.'
>
> "I was married on.....(date) and if retained in the service of the Company, will abide by the terms of the above rule and at the end of the war will upon request of the Erie Management tender my resignation."

Individuals seeking employment with the Railroad Company are required to sign as a condition to their employment the following Memorandum of Understanding.

'interfere with the normal exercise of the right of the carrier to select its employes or to discharge them.' See the RAILWAY CLERKS case, SUPRA, 571."

Unquestionably, rules may be established, compliance with which as a condition of continuance of employment may be enforced, without their being made a part of the individual agreement if they are not specifically provided against in the collective agreement.

The Employment Regulations pertaining to female employes have not been rescinded and the modifications as covered in letter November 10, 1942 by Vice President H. D. Barber are temporary for period of present emergency only. The Memorandum of Understanding is merely for the purpose of full understanding in regard to this temporary modification of the employment regulations.

OPINION OF BOARD: The material facts of this case are clearly disclosed by the submissions of the parties, which will be published as a part of this award, and are not in dispute.

As an approach to the problem before us, a few fundamental concepts of substantive law may be profitably stated. A contract whereby a party obligates himself not to marry is generally regarded as against public policy, since the marital relationship is the recognized institution by virtue of which the human race is legitimately perpetuated; but a private contract of employment by which a party merely agrees to surrender up a position in the event of his marriage is usually treated as valid, since he is left free to marry or not to marry as he chooses. Collective bargaining agreements do not ordinarily encompass the whole field of the contractual relationship of the employer and the employes; nor does such an agreement as the one here involved place any restriction upon the right of the employer to adopt and follow a policy of not employing married women.

The substantial question for determination can, therefore, be stated hypothetically, as follows: May an employer operating under a collective bargaining agreement, which provides that the employes covered thereby shall have seniority rights in filling and occupying positions and in the reduction of forces, discharge or enforce the resignation of a female employe under the agreement on account of her marriage, when the employer has a unilateral rule antedating her employment and the bargaining agreement, to the effect that married women will not be employed or retained in service? In other words, will the terms of the antecedent contract of employment prevail over the subsequent bargaining agreement, under the facts assumed in the preceding question?

We think the case of J. I. Case Co. v. National Labor Relations Board, decided by the Supreme Court of the United States on February 28, 1944, is decisive with respect to the issue here presented. In that case the company entered into individual contracts with its employes concerning rates of pay, regularity of employment and hospital facilities. Subsequently, a union was designated as the exclusive bargaining agent of the employes as to wages, hours and conditions of employment. The company thereupon refused to bargain with the union as to matters embraced in the individual contracts. The Court, in holding that the company was in error, said: "The very purpose of providing by statute for the collective agreement **is to supersede the terms of separate agreements** of employes with terms which reflect the strength and bargaining power and serve the welfare of the group." (Our emphasis.)

The carrier undertakes to distinguish the **J. I. Case Company** case with the assertion that its "married woman employment policy does not modify any collective agreement in any way, shape or form." This is, of course, strictly true as regards its **employment policy,** but the carrier is not content with that application of its policy. It goes further, and undertakes to invoke

that policy in **terminating the employment,** a subject comprehensively embraced by the terms of the effective Agreement. In the instant case the carrier has exacted of the claimant, as a condition of her continued employment, a written promise to resign upon request, at the end of the present national emergency, thereby depriving her the right of hearing and appeal, guaranteed by Article 4 of the Agreement. Her accumulated seniority, a valuable contractual property right, acquired through eighteen (18) years of labor, is, also, laid open to be confiscated without just compensation or due process of law. The conclusion at which we have arrived is in harmony with the result reached by this Board in Award 2217.

We have purposely refrained from entering into any consideration of women's rights or of the social or economic consequences of women in industry. Those problems may be appropriate subjects of legislation or negotiation but they are not within the limited jurisdiction of this Board.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing hereon;

That the carrier and the employes involved in this dispute are respectively carrier and employes 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 carrier violated the collective agreement of September 1, 1936, as contended by the petitioner.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1944.