

Award No. 3000

Docket No. CL-3045

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**

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: (1) Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that the Carrier violated the Clerks' Agreement when it refused to grant Mrs. Joyce R. Cheatham a leave of absence from January 26, 1945 to February 18, 1945, inclusive, and

(2) That the Carrier further violated the Agreement when it preferred charges against Mrs. Cheatham on February 24, 1945 for an offense alleged to have been committed on January 26, 1945, and

(3) That the Carrier was without justifiable grounds in removing Mrs. Cheatham from service, and

(4) That the Carrier be required to reinstate Mrs. Cheatham to her former position without loss of seniority, and that she be compensated for all wage losses suffered since February 19, 1945.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Joyce R. Cheatham was on January 16, 1945 the regular occupant of a position of Information Clerk in the Office of General Passenger and Ticket Agent receiving a daily rate of pay of \$7.12. On January 16, 1945, her husband, Thomas Cheatham, returned to St. Louis on furlough after approximately two years service in the South Pacific in the Seabee Branch of the Navy; he having been in service since November 29, 1942, and prior to having entered service he was an employe of this carrier, and is now on leave of absence. Upon her husband's return to St. Louis, Mrs. Cheatham called personally accompanied by her husband at the office of General Passenger and Ticket Agent and requested that she be granted her vacation allowance of nine days and an additional leave of absence from January 26 to February 18 so that she might spend the time with her husband while he was home. It was her understanding that she was to be granted the leave of absence in addition to her vacation.

On January 19, 1945, General Passenger and Ticket Agent Barnett wrote Mrs. Cheatham (See Employes' Exhibit "A"): "* * * that conditions do not permit our granting any additional time off." Upon receipt of this letter Mrs. Cheatham and her husband again called personally and pleaded with officials of the Carrier for the additional time, but this plea was denied on the basis that she could not be spared and that such a leave would establish a precedent as there were other women employes in the department whose husbands were overseas and they would likewise expect a leave when their husbands returned, and it was to be the department's policy not to grant any leaves for such reasons. On January 24, Mrs. Cheatham wrote Mr. Barnett again making a request for

A. I know I had the letters but I had no record of being dismissed from my position.

Q. You knew, however, that your request for leave, after your vacation, had been denied?

A. According to the letters; yes, sir.

Q. Frankly, don't you think it was your obligation as an employe to have returned to service at the conclusion of your vacation and then have attempted to obtain the necessary leave?

A. Well, Mr. Wicks, it may have been, but I wanted to spend every minute with him.

Q. I can appreciate that angle, but at any rate you knew very definitely from conversations and from letters, prior to January 26th, the date you were to have returned after the expiration of your vacation, that your request for a leave of absence had been denied?

A. Yes, sir."

OPINION OF BOARD: The claimant asked for a leave of absence without pay from January 26 to February 18, 1945. When this was denied she remained away from work nevertheless, although she did make a timely request for a hearing which was accorded her on March 1.

At the hearing the Claimant's representative asked the privilege of interrogating the Carrier's General Passenger and Ticket Agent, to whom the Claimant's request for a leave had been addressed and by whom it had been denied. The Carrier's Director of Personnel, who presided at the hearing and who subsequently sustained the charge, refused to permit the General Passenger and Ticket Agent to be questioned, although he was present on behalf of the Carrier.

Rule 36 (b) of the effective Agreement Provides:

"The arbitrary refusal of a reasonable amount of leave of absence to employes when they can be spared * * * is an improper practice and may be handled as unjust treatment under this agreement."

The hearing therefore brought into review the questions as to whether the Claimant might reasonably have been spared from her work during the period that she sought to be absent and whether the refusal to grant the leave was arbitrary. As to both of those inquiries the General Passenger and Ticket Agent was a competent and material witness; we may say, indeed, a most important witness. The refusal of the Carrier to permit him to be subjected to examination when he was personally present and available is wholly indefensible. The Carrier thereby laid itself open to the charge of suppressing evidence that was under its exclusive control. Such circumstances have been said to give rise to the presumption that if such evidence had been produced it would have been against the party withholding it. We must conclude that the Claimant was denied a fair and impartial hearing. Having given her a hearing, the Carrier is in no position to say that she voluntarily relinquished her rights as an employe.

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 carrier and 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 Agreement as charged.

AWARD

Claim (1, 2, 3, and 4) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 29th day of November, 1945.