

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK CENTRAL RAILROAD

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Clerks' Agreement:

- (1) When it deprived Mrs. Rose Erikson of seniority established in the Chicago District Accounting Bureau, and that her name and date shall now be restored to the roster with seniority unimpaired, and
- (2) When it refused to pay Mrs. Erikson in lieu of nine (9) days vacation not received in the vacation year ended June 30th, 1944, and that Mrs. Erikson shall now be so compensated.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Rose M. Erikson was first employed by the New York Central Railroad in the Chicago District Accounting Bureau on March 29th, 1943 as a Stenographer-Clerk, whose duties required the transcription of dictaphone dictation.

On June 21st, 1944 due to ear afflictions, Mrs. Erikson reported off sick and on June 28th, 1944, on the advice of her physician, Mrs. Erikson applied to Mr. H. R. Trowe, the District Station Accountant, for a leave of absence. On receipt of Mrs. Erikson's letter of June 28th, Mr. Trowe replied under date of June 30th, 1944 (as per Exhibit No. 1) advising her that before granting such a leave of absence he would require a statement from her doctor before he could officially grant her her request for such leave of absence.

Prior to Mrs. Erikson reporting off sick on June 21st, 1944, she was treated by Dr. A. P. Hess, who on June 9th, 1944 issued a certificate of examination reading as follows:

"To Whom it May Concern:

This is to certify that I am attending Mrs. Rose Erikson and that because of her health I have advised her to discontinue her dictaphone work."

Under date of July 7th, 1944, Dr. Walter Bayard, who later treated Mrs. Erikson, also issued a certificate of examination reading:

"Mrs. Rose Erikson has been a patient of mine for an ear affliction—dry eczema—which is apparently increased a great deal by the vibration of a dictaphone through the ear pieces necessarily

stand that the settlement was based upon no increase in expense and is now holding that carrier obligated itself to allow vacations or pay in lieu thereof to its former employees who have hired out to other companies or employers.

Obviously that new stand is unreasonable, not in accord with the records in respect of the settlement nor the practice of 24 years' standing, and furthermore it is out of harmony with the principles subscribed to by the Brotherhood in Article 8 of the National Vacation Agreement of December 17, 1941 as we have shown.

CONCLUSION: This claim en toto is without merit or sound reason and should be denied forthwith.

OPINION OF BOARD: The facts in this claim are as follows: The Claimant Employee, Mrs. Rose Erikson, entered the employment with Carrier as Stenographer-Clerk in the Chicago District Accounting Bureau on March 29, 1943. About June 1, 1944, she requested leave of absence for the month of July so she might rest, and on account of the shortage of the force, her request was denied. On June 21, 1944, she reported sick and has since performed no service for Carrier. On June 28, 1944, she applied for sick leave and stated, "I don't know the routine, but if it must be for a stated period let us say for 30 days. I do not believe it will be possible for me to resume my duties doing dictaphone work, so if it will make it easier for you it will be all right for you to post my position, but I would like to retain my seniority rights to bid on another position."

On June 30, 1944, the Carrier by Mr. A. R. Trowe replied, "I would like to receive something in writing from the Doctor for my file before officially granting this request." By letter the Claimant sent the Carrier a statement from Dr. Walter Bayard, M. D., to the effect that Claimant had an "ear affliction—dry eczema, and the only way to correct this condition is for her not to use the ear pieces necessary for the dictaphone."

On July 12, 1944, Trowe wrote Claimant that he would expect her to return to work as soon as a job on which she could apply was available.

On August 5, 1944, a conference was held with the committee in an effort to come to an agreement to permit her to return to work. Typing Position No. 40 was open and Chairman McCollum agreed to advise her of the vacancy and to ask her to accept it, but she declined.

Prior to September 11, 1944, there was a vacancy for a typist in the Industrial Department at Chicago, but telephone inquiry disclosed she was working elsewhere.

On September 13, 1944, Trowe wrote Claimant and asked her if she had any intention of bidding on the first available position and by letter on September 19, 1944, she replied that she wished to retain her seniority until such time as something suitable opened up.

By arrangement between the General Chairman and the Carrier notice dated June 26, 1945, was served on Claimant to appear for a hearing June 28, 1945, in connection with her status as an employee.

On June 27, 1945, she wrote that she was employed and could not attend the hearing June 28th, and that she presumed there was no urgency in connection with the meeting, and she saw no reason why her name should be dropped. She closed with the statement that it would be necessary to give her present employer at least two weeks' notice in order to get someone to replace her.

On July 5, 1945, Trowe wrote Claimant to set a date within the next week for a hearing, and on July 10, 1945, he informed her of a vacancy on a typist position and acknowledged her letter of July 9, 1945, in which she advised she had been in Michigan for a two weeks' vacation.

On July 30, 1945, Trowe wrote Claimant and called attention to her failure to acknowledge his letter of July 10, and informed her of an existing

vacancy. He again asked her to appear for a hearing, and on August 2, 1945, she wrote Trowe that she had come home from Michigan a few weeks before and asked him to explain what he was trying to accomplish.

On September 4, 1945, Claimant wrote Trowe that she wished to avoid a personal interview, and on September 25, 1945, Trowe wrote her that in view of her failure to attend a hearing in connection with her declining to accept a position that her name had been removed from the seniority roster.

Both parties rely on Rule 25 of the current agreement. That Rule reads:

"An employe may have thirty (30) days lay off upon receipt of permission from proper official, without written leave of absence. If for over thirty days and under ninety (90) days, he shall have written leave of absence. The limit of leave of absence to be one year, after which if any employe returns to the service, he shall be employed as a new man, except in cases of sickness, disability, or while engaged on committee work or special duty for the Company.

"Copy of letter granting leave of absence shall be furnished local chairman.

"The above shall not be considered as affecting the rules of the pension department."

A reading of Rule 25 shows that a leave of absence for 30 days or less may be had by official permission without being in writing, but a leave of absence for more than 30 days and less than 90 days must be in writing. The limit of a leave of absence is one year with the exception of a sick leave, disability, or while engaged on Committee work or special duty for the Company.

Carrier contends that even a sick leave for more than 30 days must be in writing. As this Board views this record, it is not necessary to rule this question. The facts remain that Claimant's name was on the seniority roster until it was removed by the Carrier on September 25, 1945, and during all this period of time the Carrier treated Claimant as an employe as will be seen from the facts set out above. Under these facts the Carrier is now estopped from contending she was not an employe prior to the time it removed her name from the seniority roster.

In effect, Claimant permanently left her position as dictaphone operator when she wrote Carrier that she did not believe it possible to resume dictaphone work and that it would be all right for the Carrier to post her position, but that she wanted to retain her seniority rights. Nor does the record support the fact that she was sick during all of this time. She began working in a law office as a stenographer in September, 1944.

Under these facts, the Board concludes that the Carrier had a right to remove her name from the seniority roster when it did. Since she was not sick, under Rule 25, under any circumstances, the Carrier had a right to remove her name at the end of one year. Therefore, her claim that her name be restored to the seniority roster is denied.

It is the position of the Carrier that Claimant is not entitled to a vacation or vacation pay for the reason she voluntarily left its service on June 21, 1944. Rule 44 is the Vacation and Sick Leave Rule. That part of the Rule which applies to vacations reads as follows:

"(a) The vacation year runs from July 1 to June 30.

"(b) The length of vacation for monthly paid employes shall be based on the following service periods:

"Employes in service six months to and including one year, one week (6 working days); employes in service over one year and

less than three years, one and one-half weeks (9 working days); employees in service three years and over, two weeks (12 working days).

"This arrangement supersedes all previous arrangements with respect to vacations."

Under this Rule an employe earns his vacation in one fiscal year, that is, from July 1 to June 30, and receives it in the next fiscal year.

In the claim before this Board, Claimant earned her vacation leave during the year beginning July 1, 1943, and ending June 30, 1944. In fact, it had been arranged for her to take her vacation from August 5, 1944, to August 15, 1944.

From what we have said in reference to Claim No. 1 of this dispute, she was an employe on July 1, 1945, in fact, until September 25, 1945, and therefore she was entitled to the vacation pay as she contends.

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 the Employe involved in this dispute are respectively carrier and employe 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 Claimant is not entitled to have her name restored on seniority roster and that she is entitled to the vacation pay as she contends.

AWARD

Claim No. 1 denied. Claim No. 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of December, 1946.