

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that employee, Miss Helen F. Nicoloff, of the Reservation department, be compensated for wage loss suffered September 17, to September 26, 1946.

OPINION OF BOARD: This is a claim of the Brotherhood in behalf of Helen F. Nicoloff for compensation based on the Carrier's violation of Rules 24 and 28 of the parties' agreement.

Carrier admits the violation and states its position with reference thereto as follows:

"The portion of the rules that Mr. Barnett inadvertently violated are procedural and the violations did not affect any of Miss Nicoloff's rights incident to the investigation or incident to her employment."

As stated by Mr. Barnett in his letter of November 11, 1946:

"I did not think it necessary to notify her about the result of the investigation or to send her or the Local Chairman a copy of the transcript. However, I have been informed that I was in error on both assumptions."

As further stated by the Carrier:

"The only departure from the provisions of Rule 24 was Mr. Barnett's failure to confirm his decision in writing. Likewise, the only failure in complying with Rule 28 was that a copy of the transcript was not furnished to the employee or her representative until after the employee had been restored to her position."

A copy of the transcript of the proceedings had at the hearing on September 20, 1946 was not furnished to claimant or her representative until November 11, 1946.

While the provisions of Rules 24 and 28, which have been violated, are procedural in their nature they do perform a functional purpose necessary to the maintenance of a proper relation between employee and carrier when cause for complaint arises.

When such complaint has been lodged against an employee, and hearing had thereon, it is important that the party affected thereby may know the decision of the Carrier and what action, if any, it has taken. In order that there may be no possible misunderstanding in regard thereto, such as here, the Carrier must render its decision as by the Rules provided.

When such decision is rendered and action taken thereon, if any, it then becomes important for the party affected and his representative, to have a complete and correct transcript of the proceedings upon which such decision is based in order that they may determine what action, if any, they should take.

In the absence of either or both, due to the fault of the Carrier, we find the rights of the claimant have been denied as provided by the Rules of the parties' agreement.

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 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 Rules of the Agreement have been violated as set forth in the opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of December, 1947.