Award No. 4112
Docket No. CL-4141

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

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

DETROIT TOLEDO AND IRONTON RAILROAD COMPANY

STATEMENT OF CLAIM: (1) Claim of the System Committee of the Brotherhood that the Carrier violated its agreement with the Brotherhood when, effective July 7, 1947, it denied Mrs. Dee B. Poyer her contractual rights to occupy the position of Lead Comptometer Operator, the position to which she was regularly assigned, in the General Offices of the Carrier at Dearborn, Michigan, and

(2) That by reason of such violation, the Carrier shall now be required to compensate Mrs. Dee B. Poyer for the dates of July 7, 8, 9, 10, 11, 12 and 14, 1947 at the rate of $8.29 per day.

EMPLOYES' STATEMENT OF FACTS: The Carrier issued the following bulletin on October 21, 1943:

"Clerks' Agreement Seniority District No. 3 Bulletin No. 55

Dearborn, Michigan
October 21, 1943

To Employes Concerned:

The following position is hereby bulletined for bids in accordance with Rule 9 of Clerks' Agreement. Bids will be accepted by the undersigned up to 9:00 A. M., October 27, 1943. Bids must be submitted on Form M-111.

Location—**General Office, Dearborn**
Daily rate of pay—**$6.08**

Hours of assignment—**8:30 A. M. to 5:00 P. M.**
Assigned day of rest—**Sunday**

Title of position—**Lead Comptometer Operator**
Beginning date—**Within 5 days after October 27, 1943**

Meal period assignment—**12:45 P. M.-1:15 P. M.**
Duration—**Indefinite**

Brief description of duties:

Operating comptometer and supervising and distributing work to comptometer operators in the Disbursement Dept. Applicant must know enough about the work so as to be able to give other operators instructions.

E. H. McCauley,
General Auditor."

and the assignment thereto was made as follows:

5. Mrs. Poyer is guilty of a violation of the Agreement when she failed to appear in the General Auditor's office in response to that gentleman's letter of July 10. The Vice Chairman has attempted to excuse this rank insubordination by contending that the General Auditor should have used the word "investigation" instead of "hearing" in his letter. We respectfully submit to your Honorable Board that to attempt to take advantage of such a slight change in language is highly preposterous. The language of the letter clearly instructed Mrs. Poyer to report to the General Auditor's office and she should have done so. Furthermore a summons from the company such as Exhibit No. 4 could not be interpreted as anything other than an investigation in the light of the first note to Rule 32 which reads as follows:

> "Investigation as used in this agreement shall mean a proceeding instigated by the Management at which an employe or employes are required to appear at a stated time and place to answer or ask any relevant questions of anyone present, in connection with an alleged charge against an employe or employes. The purpose of an investigation is to develop facts upon which a decision may be based."

Employes are presumed to know the terms of their agreement with the carrier. It is only equitable that a plaintiff in any case should enter a case with clean hands. It could hardly be said in this case, that Mrs. Poyer, in filing claim for lost time, is without considerable blame herself.

6. In Award 3218 your Honorable Board laid down the following fundamental principle, later referred to and approved in Awards 3260 and 3340. "The Carrier is obliged to make the initial interpretation of the rules and direct how the work shall be done. If the contract is violated by the Carrier in so doing, it subjects itself to prescribed penalties. Employes as a general rule must perform the work as directed and in case of contract violation, seek redress under the terms of the Agreement."

The work assigned to Mrs. Poyer was definitely within the scope of the Agreement. Rule 1(a)1 reads as follows:

> "This agreement shall govern rates of pay, hours of service and working conditions of the following employes:
>
> 1. Clerks
>
> (a) Clerical workers
>
> (b) Machine operators."

In arbitrarily refusing to perform the work assigned to her position, leaving the office without permission and remaining away from work without notifying her supervisor and also without permission, Mrs. Poyer, we contend, left herself entirely without redress under the contract. As also stated in Award 3260:

> "If the rule be otherwise, there would be no centralized management and a disciplined organization would be succeeded by chaotic disorder."

CARRIER'S CONCLUSIONS: It is our considered conclusion that the Carrier in this instance has "leaned backward" in its effort to treat Mrs. Poyer fairly. In retrospection, it appears to us now that Mrs. Poyer should have been suspended from service on several counts instead of being dealt with so leniently.

Your Honorable Board is respectfully requested to deny claimant's claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The record in this case discloses that Mrs. Dee B. Poyer was not denied her contractual rights to occupy her position of Lead Comptometer Operator as alleged by the petitioner. She left the posi-

tion and office of her own volition and any compensation she lost on the days in question was the result of her own actions.

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 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 record does not sustain the claim.

AWARD

Claim (1 and 2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of September, 1948.