

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, that the Carrier violated the Clerks' Agreement:

(1) When, on Monday, March 8, 1948, it denied Clerk Herman J. Geers the right to work his regular assigned position, sending him home after completion of one (1) hour and thirty (30) minutes work for which he was not paid, and

(2) That Clerk Herman J. Geers be paid eight (8) hours at pro rata rate for March 8, 1948.

EMPLOYEES' STATEMENT OF FACTS: Clerk Herman J. Geers is regularly assigned to a position necessary to continuous operation in the Information Bureau, having hours from 7:00 A. M. to 3:30 P. M., thirty (30) minutes for lunch, and rest day, Tuesday.

On Saturday, March 6, 1948, Clerk Geers was requested to work the temporary position of ticket seller Sunday, March 7, and he agreed to do so, but at 6:15 A. M. Sunday morning he called the ticket office and advised Mr. Severns that he was ill and could not work the temporary ticket seller's position that day but would be in "tomorrow" (Monday).

On Monday, March 8, Clerk Geers reported at 7:00 A. M., starting time of his regular assigned position, and after working until 8:30 A. M. was called into the office of the General Passenger & Ticket Agent and told by that officer that he could not work that day as another clerk had been called in his place.

Mr. Severns, on reporting Mr. Geers' phone call made Sunday morning, reported Mr. Geers as saying, "Thinks he will be in tomorrow" and when Mr. Geers protested being denied the right to work, Mr. Severns was called and questioned by the General Passenger & Ticket Agent as to the conversation he had had with Mr. Geers, and Mr. Severns then stated that Mr. Geers had said, "He thought maybe he would be in tomorrow", and later in the same conversation Mr. Severns said that Mr. Geers had stated "He would probably be in tomorrow."

On the date in question, March 8, Reservation Clerk, Charles E. Lange, was instructed to suspend work on his regular position and work Mr. Geers' position in the Information Bureau, and furloughed clerk, Mrs. Howenstein,

Clerk Geers remained at the office until 8:30 A. M. to make protest to the Chief Clerk because he was not permitted to work his assignment but he did not perform any service at all on that date.

In view of Clerk Severns' positive statement as to what was said in the telephone conversation, which he later confirmed in the presence of the claimant, and there being no reason to doubt his statement, the claim is without merit and should be denied.

Exhibit not reproduced.

OPINION OF BOARD: While there are four separate departments of the ticket office organization in which claimant works, all employees of the four departments are on one seniority roster. On Saturday, March 6, 1948, claimant was regularly assigned to a first trick position as bureau of information clerk, with Tuesday as his rest day. On this Saturday claimant was instructed to work a ticket clerk position on the next day, Sunday, by reason of a temporary vacancy which existed in that position. About 6:15 A. M. on Sunday, March 7, claimant phoned the ticket office and told Clerk Severns that he was ill and would be unable to work that day; claimant also made a statement in regard to work in his regular assignment the next day, Monday, March 8. The parties are in disagreement as to what was said by claimant in regard to work on Monday. Claimant contends that he said, "I'll be in tomorrow." Clerk Severns first reported that "He thinks he will be in tomorrow," but later he said that claimant reported that he thought maybe he would be in tomorrow, and when Severns was again asked about the conversation he said that claimant reported that he would probably be in tomorrow.

When claimant reported for work on Monday, March 8, the Carrier denied him the right to work; the Carrier contends that it did so because claimant had not reported that he would be back Monday, and that it thus had been necessary for the Carrier to assign another employee to work claimant's position on that day. Claimant contends that he was denied the right to work as punishment, and that he was thus disciplined without being accorded the right to an investigation and hearing as provided for in Rules 23 and 24 of the Agreement of April 1, 1945. The Carrier contends that by past practice and employee who has been absent must report by 2 P. M. on the day before returning to work, that he intends to return to work the next day.

Claimant relies, in part, upon the second paragraph of Rule 45, which is as follows:

"Nothing in this agreement shall be construed to permit the reduction of work days below six (6) per week, except that this number may be reduced in a week in which one of the seven holidays specified in Rule 44 occurs to the extent of such holiday."

The record clearly shows that Clerk Severns was uncertain as to just what claimant had said to him. Because Severns did not have a clear memory in the matter this Board cannot place much reliance upon it. Even if the Board should accept Severns' original version, "He thinks he will be in tomorrow," the Board does not believe that the Carrier was justified in refusing to permit claimant to work. The Carrier would not be justified on the basis of such statement in assuming that claimant would not report for work; a more reasonable interpretation of such a statement would be that claimant would report for work on Monday unless before that time he should report that he could not work.

The record shows further that on Monday, March 8, there was a temporary vacancy in another position which claimant could have worked, and that on that day one position was blanked because of a shortage of employees.

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 Employee involved in this dispute are respectively carrier and employee 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of March, 1949.