

Award No. 5058

Docket No. CL-4971

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Peter M. Kelliher, Referee

PARTIES TO DISPUTE:

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

**GULF COAST LINES; INTERNATIONAL-GREAT NORTHERN
R. R. CO.; THE ST. LOUIS, BROWNSVILLE & MEXICO RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
ANTONIO, UVALDE & GULF R. R. CO.; THE ORANGE &
NORTHWESTERN R. R. CO.; IBERIA, ST. MARY & EASTERN
R. R. CO.; SAN BENITO & RIO GRANDE VALLEY RY. CO.;
THE BEAUMONT, SOUR LAKE & WESTERN RY. CO.; SAN
NEW ORLEANS, TEXAS & MEXICO RY. CO.; NEW IBERIA &
NORTHERN R. R. CO.; SAN ANTONIO SOUTHERN RY. CO.;
HOUSTON & BRAZOS VALLEY RY. CO.; HOUSTON NORTH
SHORE RY. CO.; ASHERTON & GULF RY. CO.; RIO GRANDE
CITY RY. CO.; ASPHALT BELT RY. CO.; SUGARLAND RY. CO.**

(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the Clerks' Agreement at McAllen, Texas, when it abolished position of General Clerk No. 1593 one day in advance of that shown in bulletin. Also

(b) Claim that Mrs. Fay Blackwell be paid for the payroll day of February 3, 1949.

EMPLOYEES' STATEMENT OF FACTS: Mrs. Fay Blackwell was regularly assigned to position of General Clerk No. 1593 at McAllen, Texas, with assigned hours 9:00 P.M. to 5:00 A.M.

When she reported for duty at 9:00 P.M., January 31, 1949, she found a message from the Agent reading:

"Effective after completion of day's work Thursday, February 3rd, position of General Clerk No. 1593 will be discontinued."

On February 1, 1949, the Superintendent issued bulletin advising that the position in question would be abolished —

"effective with termination of assignment on February 3, 1949."

have had further investigation made with Agent Bonner at McAllen who advises under date of October 4, as follows:

'My understanding was and is that position was discontinued at 5:00 A.M. Thursday, February 3rd. This gave the Clerk 72 hours notice, 9:00 P.M. January 31 to 9:00 P.M. 3rd, before another trick was worked, same as stated in Mr. Judd's letter dated February 17th.

I do not remember telephoning Mrs. Blackwell regarding same, no one in this office recalls telephoning her.'

Under the circumstances related above, the claim of Clerk Blackwell is respectfully declined.

Yours truly,

/s/ T. Short."

There is not much more, if anything, that the Carrier can at this time add to its position as set forth in the above quoted letter. In view of the facts in this case as set forth in the foregoing the Carrier is, frankly, at a loss to understand the position taken by the Employees that Mrs. Blackwell is entitled to an additional day's pay, or a total of four days' pay following notice given her the evening of January 31, 1949 that her position would be discontinued "effective after completion of day's work Thursday, February 3". Admittedly, the notice given Mrs. Blackwell could have been more specifically worded to read: "Effective after completion of day's work at 5:00 A.M. Thursday, February 3". Had the notice been so worded it would have obviated any possibility of the misinterpretation now being placed on it by the Employees—that as worded it can only be interpreted to mean the position would be discontinued following completion of assignment started at 9:00 P.M. February 3 and ending at 5:00 A.M. February 4. However, there is nothing in the notice of January 31, 1949 to justify the interpretation placed thereon by Division Chairman Gould as indicated in his letter to Superintendent Judd, February 16, 1949 (quoted in Paragraph 6 of Statement of Facts), i.e., that "Mrs. Blackwell received a notice from the Agent at McAllen advising that her position would be abolished after completion of day's work beginning 9:00 P.M. Feb. 3, 1949." (Underscoring added). That notice (quoted in Paragraph 3 of Statement of Facts) clearly reads: "Effective after completion of day's work Thursday, February 3, 1949."

Support for and, we believe, conclusive evidence of the fact that the notice intended that the position would be discontinued following completion of day's work ending at 5:00 A.M. February 3, may be found when considered in conjunction with Rule 19(a), quoted above, which provides that " * * * employees affected in reduction of force shall be notified at least three (3) days in advance of the effective date reduction is to be made * * * ". As previously shown, Mrs. Blackwell received her notice the evening of January 31 when she reported for duty at 9:00 P.M.; she worked that night, the night of February 1, and the night of February 2, or a total of three days (or nights) following the notice given her, as provided in Rule 19(a). Since Rule 19(a) requires three days advance notice, not four days, it seems obvious that the notice of January 31 intended that the position would be discontinued following completion of assignment at 5:00 A.M. February 3. As evidenced by the Carrier's letter to the General Chairman October 7, 1949, quoted above, that was the intent and understanding of Agent Bonner, who composed the notice given Mrs. Blackwell. To place any other interpretation on the notice of January 31 requires reading into it something that is not there, nor intended.

(Exhibits not reproduced).

OPINION OF BOARD: The essential facts are not in dispute, and the parties agree that Rule 19 (a) is controlling.

"Rule 19. Reducing Force

"(a) Regular assigned employees affected in reduction of force shall be notified at least three (3) days in advance of the effective date reduction is to be made and employees affected will be paid up to the end of that period. When reducing forces, seniority rights shall govern. Employees whose positions are abolished may exercise their seniority over junior employees. Other employees affected may exercise their seniority in the same manner. Employees displaced whose seniority entitles them to regular positions shall exercise their seniority within ten (10) days. Employees exercising seniority by displacement must give at least 24 hours advance notice to the proper official and the employee to be displaced with a copy to Division Chairman."

The written notice that was given in compliance with Rule 10 (a) on January 31, 1949, at about 9:00 P.M. reads as follows:

"Effective after completion of days work Thursday, February 3rd, position General-Clerk No. 1593 will be discontinued."

Although on the following day, February 1, 1949, Bulletin No. 27 was issued, this did not constitute a notice under the provisions of Rule 19 (a). The shift which began at 9:00 P.M. February 2, 1949, and ended at 5:00 A.M. February 3, 1949, was the February 2, 1949, assignment, and was so carried on the payroll. Several Awards of this Board uphold the position that work commencing at 9:00 P.M. February 2, 1949, is to be considered as work performed on that day. Awards 7 and 398. In Award No. 2204, the Board stated:

"So far as the record discloses, we are of the opinion that when speaking of the work which continues through portions of two calendar days, railroad men speak of it as work of the day on which it started."

The Carrier states that:

"Admittedly, the notice given Mrs. Blackwell could have been more specifically worded to read: 'Effective after completion of day's work at 5:00 A.M. Thursday, February 3'. Had the notice been so worded it would have obviated any possibility of the misinterpretation now being placed on it by the Employees—that as worded it can only be interpreted to mean the position would be discontinued following completion of assignment started at 9:00 P.M. February 3 and ending at 5:00 A.M. February 4."

The Carrier, having prepared this notice, is responsible for any ambiguity. The Carrier did not controvert the petitioner's statement that the Carrier often does give more than three (3) days' notice. It must be noted that Rule 19 (a) provides that the employee be notified "at least" three (3) days in advance of the effective date. The claimant had a right to assume that the Carrier was giving more than three (3) days' notice. The "days work Thursday, February 3rd" would not commence until 9:00 P.M. on that date. The employee was entitled to rely on the Carrier's statement that her position would not be discontinued until after the completion of this work. The notice that was given to the claimant on January 31, 1949, which constitutes the only proper notice under Rule 19 (a), does not contain the preposition "at", but rather it contains the preposition "after". In accordance with the plain meaning of the words used, the position was not discontinued until after the day's work beginning on Thursday, February 3rd, was completed, and the claimant should have been paid up until the end of that period.

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 Agreement was violated.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1950.