

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Jay S. Parker, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: This is a claim of the System Committee of the Brotherhood that:

(a) The Carrier violated the rules of the Clerks' Agreement when on or about January 1, 1948, Mrs. Harriette Godin was improperly transferred from the position and desk of Passenger Clerk in the office of Auditor of Freight and Passenger Accounts, to which she had been assigned, to another position and desk of Passenger Clerk in that office, to handle a different type of work.

(b) Mrs. Godin was declared disqualified and removed from the position of Passenger Clerk in the office of Auditor of Freight and Passenger Accounts on September 8, 1948, which action was in violation of the rules of the Clerks' Agreement.

(c) Mrs. Godin be reinstated to the position and desk of Passenger Clerk to which she was assigned on November 21, 1946, and paid for all wage loss sustained.

EMPLOYEES' STATEMENT OF FACTS: Position of Passenger Clerk, in the office of Mr. Thos. Kearns, Auditor of Freight and Passenger Accounts, was advertised for bids on November 16, 1946, as shown in Employees' Exhibit 1. Harriette Godin was assigned to this position on November 21, 1946, as shown in Employees' Exhibit 2.

Thereafter, Mrs. Godin held this assignment continuously except for the period May 19, 1948 to June 17, 1948, during which period she was temporarily assigned to position of Interline Clerk. Upon disqualifying herself on position of Interline Clerk she was permitted to return to her regular assignment of Passenger Clerk on June 18, 1948, as shown in Bulletin No. 48-42-A. (Employees' Exhibit 3.)

On September 8, 1948, Mrs. Godin was removed from her assignment of Passenger Clerk. (Employees' Exhibit "4".)

On September 14, 1948, she was advised that a hearing would be held on September 17, 1948. (Employees' Exhibit "5").

Hearing in connection with Mrs. Godin's disqualification was held as scheduled on September 17, 1948. (Employees' Exhibit "6"). Decision was ren-

worthy manner. The intent of the rule is to provide employees sufficient time in which to familiarize themselves with the detail of a position and to prevent supervisors from arbitrarily moving employees from positions in less than 30 days without due cause. The rule provides that employees cannot be disqualified before the expiration of 30 days without hearing.

- (3) The notice addressed to Mrs. Godin stated that she was being removed from the position of Passenger Clerk because she was not performing the duties of the position in a reasonably efficient manner. It stated specifically what action was being taken and why it was being taken.

Carrier feels its action in disqualifying Mrs. Godin was clearly substantiated in the hearing held on September 17, 1948. It is very evident that Mrs. Godin was not performing the duties of her position with even reasonable efficiency and, even after being on the position for over a year, she could not grasp the work sufficiently to carry on her duties without numerous errors. In having Mrs. Godin handle the tracers from other railroads, Carrier felt Mrs. Godin might more easily grasp the procedure for handling of the latter tracers and become more proficient in her work. In this respect, Carrier feels it has gone out of its way in attempting to educate Mrs. Godin and has been unusually fair in its efforts to retain her on the position of Passenger Clerk.

Carrier did not dismiss Mrs. Godin from the service; she retained her seniority rights and, had she desired, could have bid on other positions for which she was qualified in the Office of Auditor, Freight and Passenger Accounts. The fact that such positions were available to her is evidenced by Bulletin No. 48-109, dated October 12, 1948, advertising position of Ticket Checker, which expired subsequent to October 13, 1948, the last date of the leave of absence authorized Mrs. Godin.

Furthermore, Mrs. Godin has never requested an extension of her 30-day leave as required in Paragraph (c), Rule 50, nor contacted Auditor Levy subsequent to the hearing.

In view of the fact that a position was open for Mrs. Godin to occupy at the expiration of her leave of absence and the fact that she made no effort to extend her leave of absence or to contact her supervisors, Carrier is at a loss to understand why the Organization progresses a claim for an employee who has made no attempt to continue her employment relationship with Carrier. Notwithstanding the facts that the employee has failed in every respect to protect her seniority rights by overstaying her leave of absence and by failing to bid on positions which were available to her over a period of, at present, 18 months, the Organization has included in its claim a request for pay for all wage loss sustained. Under these circumstances, it is Carrier's opinion that no wage loss has been sustained by Mrs. Godin.

(Exhibits not reproduced.)

OPINION OF BOARD: On November 16, 1946, the Carrier advertised the position of Passenger Clerk in the office of its Auditor of Freight and Passenger Accounts with duties consisting of tracing foreign roads for revenue on tickets it had honored and handling tracers from foreign roads on tickets it had issued, with such other duties as might be assigned. Mrs. Harriette Godin bid in the position and was given the assignment on November 21, 1946. She was given a desk in the office on that date and first assigned the work of issuing Western Pacific tracers. Her performance of that work was not satisfactory and on or about January 1, 1948, she was assigned the work of handling foreign line tracers at another desk. This was work of the position she had bid in and resulted in no violation of the Agreement. Thus it appears there is no sound ground for a sustaining Award on item "(a)" of the statement of claim.

Mrs. Godin performed the work of handling foreign line tracers until May 19, 1948, when she bid for and was assigned to the temporary position of Interline Clerk. She disqualified herself from this position on June 17, 1948, within 30 days, and in compliance with Rule 30 of the current Agreement the Carrier permitted her to return to her position of Passenger Clerk on June 18, 1948, and resume the work she had been doing on that position before she took over such temporary assignment.

We pause here to point out that some significance is to be attached to the fact the record discloses that prior to bidding in the position of Interline Clerk, and on April 12, 1948, Wm. A. Racine, the Carrier's Chief Clerk Passenger Accounts had written Mrs. Godin as follows:

"I have called your attention several times to the fact that you are not producing results in connection with answering Ticket Tracers. From January 19, 1948 to April 10, 1948, the period you have been doing this work, you have answered 854 items; whereas the other clerk doing the same work has answered 3,138 items during the same period.

"I will now ask for the last time that you show definite improvement in the immediate future or it will be necessary that I recommend that you be taken off the job."

We note also that following her return to the Passenger Clerk's position under date of June 23, 1948, he wrote her thus:

"Your work in the past on the position to which you returned in June 19, 1948, has never been satisfactory.

"The quality and quantity of your work has never measured up to the requirements of the position.

"On many occasions in the past, I have called your attention, both orally and in writing, to the many instances when you failed to furnish the proper information in replying to Foreign Line tracers, and also to your failure to turn out an average day's work.

"Unless you now perform the duties of the position satisfactorily I will have to request that you be disqualified."

Likewise it should be added that within three months thereafter, on September 3, 1948, Mr. Racine wrote the Carrier's Auditor of Freight and Passenger Accounts the following letter in which he enclosed a statement conclusively demonstrating Mrs. Godin's production was far less than other employees performing the same type of work:

"Attached find detailed record of Number of Items of Foreign Roads' Ticket Tracers worked by Clerks on tracer jobs which indicates insufficient production by Mrs. Godin.

"I have also found that it is still necessary for Mrs. Godin to unduly depend upon other Clerks in the department for assistance in order to conclude the small amount of work she actually accomplishes.

"In view of the above mentioned facts, I suggest Mrs. Godin be disqualified."

Thereafter, and on September 8, 1948, the Carrier wrote and delivered the following communication to Mrs. Godin:

"This will confirm conversation this morning in which you were advised of your failure to perform the duties of Passenger Clerk, to which you are now assigned, in a reasonably efficient manner,

and of the necessity for removing you from that assignment at the close of business today."

We note in passing Mrs. Godin was never dismissed from the Carrier's service and that she was granted a leave of absence from September 14 to October 13, 1948. So far as the record shows the Carrier has not since heard from her since its expiration.

On September 17, 1948, after receipt of information she desired it, the Carrier advised Mrs. Godin she would be given a hearing in connection with its action in removing her from the Passenger Clerk's position because of failure to perform the duties of that position in a reasonably efficient manner. After holding this hearing, at which the claimant was present, accompanied by her representative, and testified along with a number of other witnesses at great length the Carrier notified Mrs. Godin the evidence sustained its action in removing her from her position as Passenger Clerk and that it adhered thereto.

We have carefully examined the evidence taken at the hearing which, because of its volume, should not be detailed here. Summarized it shows that not one but several witnesses, at least three of whom belonged to her own craft, testified in substance to the effect that Mrs. Godin's services with the Company had been far from satisfactory. To illustrate, in every situation hereinafter outlined there was evidence supported by at least two witnesses in substance as follows: (1) that Mrs. Godin's production ability was 76% below that of her co-worker Mrs. Ranney, (2) that she unduly depended on other employes and supervisors by asking the same questions over repeatedly, (3) that the output of one of her co-workers increased markedly after she was removed from the position, (4) that she had been warned repeatedly by her supervisor both orally and in writing that her production was insufficient, (5) that other clerks handling foreign line tracers handled items to a conclusion, which she failed to do, (6) that she made repeated errors in the performance of her work resulting in loss of time and revenue to the Carrier. Supplementing this Mrs. Godin's own testimony was to the effect she had not been well, that she was nervous and could not concentrate and that she had felt the need of a leave of absence and sought it for some time.

With all the foregoing evidence and other testimony clearly indicating Mrs. Godin's incompetency as an employe, there is no room in this case to argue the Carrier's action in removing her from her position was not supported by substantial evidence or to contend its action in doing so was arbitrary or capricious.

Thus it appears the only ground upon which the claim can be sustained, if at all, must be upon the premise such action was in outright violation of some express provision of the current Agreement.

The Organization contends the Carrier violated Rule 30 by removing Mrs. Godin from her position of Passenger Clerk more than thirty days, in fact many months, after she had established her qualifications therefor. The gist of its argument is that if an employe is permitted to remain on a position more than thirty days the Carrier is forever barred from thereafter raising any question as to his qualifications. We do not agree. The rule on which claimant relies is a qualifying rule and has nothing to do with the responsibility of an employe for subsequent acts of negligence, carelessness or incompetency. Rule 29 of the Agreement has application after an employe has qualified. Under its terms an employe can be displaced, after qualifying, for failure to show fitness and ability to fill or continue to fill the position to which he has been assigned.

Finally the Organization urges the Carrier violated Rule 45 of the Agreement providing an employe shall not be disciplined or dismissed unless apprised in writing of the specific charge against him. There is no merit to this contention. This was not a discipline or dismissal case but one where an

employee was displaced from her position on grounds of having failed to perform its duties in a reasonably efficient manner—hence Rule 45, except as it was brought into play by Rule 46 providing procedure in cases where an employee considers himself unjustly treated, has no application. Mrs. Godin asked for and was given a hearing in conformity with Rule 46. Manifestly its terms assume she already had notice of the Carrier's action and do not require the precise notice contemplated by Rule 45.

We find nothing in the record to warrant us in holding Mrs. Godin was removed from her position as Passenger Clerk in violation of the Agreement. Therefore the claim as filed cannot be sustained in any particular. In so doing we have not overlooked but purposely refrained from discussing matters pertaining to this woman's present status as an employee. The claim is not based on any rights she may have in that regard and if it was the record does not contain facts sufficient to enable us to pass upon them.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier did not violate the Agreement.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1950.