

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

Anna D. Creighton, Clerk, Ticket Receiver's Office, Pittsburgh, Pennsylvania, be returned to duty with seniority rights unimpaired and be compensated for all monetary loss sustained beginning July 9, 1948, until adjusted. (Docket G-65)

EMPLOYEES' STATEMENT OF FACT: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant in this case is an employee holding a regular position of Clerk covered by the Scope of that Rules Agreement having seniority standing in Group 1 on the seniority roster for the Accounting Department, Ticket Receivers' Offices, as of 2-01-1943. For personal reasons the Claimant, Anna D. Creighton, addressed a letter to her immediate superior, Mr. F. A. Schlotter, Ticket Receiver, dated June 28, 1948, resigning from the service as of July 9, 1948. Before this date, July 3, 1948, she wrote another letter withdrawing her resignation. Mr. Schlotter replied by letter dated July 6, 1948, that her resignation had been accepted. Under date of July 30, 1948, Mrs. Creighton wrote Mr. F. A. Schlotter, Ticket Receiver, protesting against not being retained as a Clerk and making claim for her position with pay for time held off duty. The case was then handled in the usual manner and was progressed to the General Managers, including Mr. E. Hart, Comptroller, by means of a Joint Submission. The Comptroller ranks with the General Managers and is the "chief operating officer designated to handle labor disputes". This Joint Submission is attached as Employees' Exhibit "A" and will be considered a part of this Statement of Facts. We quote from the General Managers' letter of October 14, 1949, in which our claim is denied:

disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that under the applicable Agreement between the parties to this dispute, the Claimant terminated her employment relationship with this Company when she submitted her written resignation. She is not entitled to be restored to service with her former seniority rights and is not entitled to the compensation claimed.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant was the occupant of a position in the Accounting Department, Ticket Receiver's Office, with a seniority date of February 1, 1943. By letter bearing the date of June 28, 1948, Claimant wrote Carrier as follows: "I would like to offer this letter as my resignation from the Ticket Receiver's Office, Pennsylvania Railroad, to become effective July 9, 1948." On July 3, 1948, Claimant wrote Carrier as follows: "Something has come up that makes it necessary for me to withdraw my resignation which I had asked to become effective July 9, 1948." The Carrier contends that the letter of June 28, 1948, terminated Claimant's status as an employee and the letter of July 3, 1948, was ineffectual to preserve any rights under the collective agreement. The Claimant contends that the letter withdrawing her resignation was effective for the purpose of preserving her rights under the Clerks' Agreement and that the Carrier violated the Agreement in treating the letter of June 28, 1948, as a complete severance of the employer-employee relationship.

The letter of June 28, 1948, does not have the effect of severing Claimant's relationship with the Carrier as of that date. She was still an employee thereafter with rights which she could properly enforce. The letter of resignation, effective July 9, 1948, indicated an intent to resign on the latter date. It was a unilateral instrument which could properly be withdrawn unless the minds of the parties had met with reference thereto and, perhaps, unless the letter had so misled the Carrier that the status quo could not be maintained without serious damage to the Carrier.

The record is clear that the minds of the parties had not met. The Carrier did not advise Claimant of the acceptance of the resignation. Consequently there was no mutual agreement that Claimant would leave the service of the Carrier on July 9, 1948. Neither did the Carrier act upon the letter in such a manner that the employment of Claimant could not be continued without serious damage to it. It is true that the Carrier selected an employee to assume Claimant's position who left the employment of the Carrier before assuming it. This was not injurious to the Carrier. The Carrier then selected another for the position who expected to assume it. But this is not such a situation as would preclude a withdrawal of the resignation effective at a future date. Claimant being entitled to the position by virtue of her seniority, the person selected could acquire no rights to the position as against those of the Claimant.

The purported resignation of the Claimant never became effective under the circumstances here shown. Consequently the rights of Claimant under the collective agreement remain unimpaired. The Carrier violated the Agree-

ment in refusing to permit Claimant to work the position on and after July 9, 1948. An affirmative award is required.

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 Agreement was violated.

AWARD

Claim sustained. Claimant to be compensated for earnings lost, if any, from July 9, 1948, until recalled to service.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of November, 1950.