

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

**THE LONG ISLAND RAIL ROAD COMPANY
(Wm. Wyer, Trustee)**

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

1. The Carrier violated the provisions of the Clerks' Agreement and specifically Rules 3-C-1(f) and 5-D-1(c) and (d), when it permitted Mrs. Ellen Kelly to return to service as a Telephone Operator, after an absence of over four (4) years, with a seniority date of 7-12-40, instead of a seniority date of 11-27-50, and

2. The Carrier shall correct the seniority date of Mrs. Kelly to read 11-27-50 and shall pay all telephone operators at prevailing rates, who lost time account of Mrs. Kelly being assigned ahead of such affected telephone operators, retroactive to November 27, 1950.

OPINION OF BOARD: This case has previously been before the present Referee, who on June 12, 1953 made an Award, based on jurisdictional grounds. At the time the claim was heard, it appeared that the seniority rights of one Mrs. Ellen Kelly were involved, but at the time of the Award, such employee had not been made a party to such claim, although the record disclosed her rights of seniority would be substantially affected, if the claim as made would result in a sustaining Award. Accordingly on June 12, 1953 Award 6227 was made retaining the case in this Board, requesting that Mrs. Ellen Kelly be notified of the pendency of the claim and that she be given an opportunity to appear before this Board in accordance with the Opinion rendered.

Following the Award, Mrs. Kelly was given sufficient notice, and appeared before the Board through her representative at a hearing December 16, 1954. The matter now again comes before the Referee for final determination, following compliance with the terms of the Award as heretofore made.

As stated in our previous Opinion it was conceded that Carrier had not granted the leave of absence to Mrs. Kelly, in conformity with the negotiated agreement.

The record discloses Mrs. Kelly was off duty on sick leave granted by Carrier from June 1, 1946, to November 27, 1950, that her name was shown

on the Seniority Rosters for the years 1946, 1947, 1948, 1949, and 1950, with a seniority date of July 12, 1940. There is nothing contained in the record that Mrs. Kelly was not ill during this period, although it is clear she has not properly protected her seniority as provided by Rule 3-C-1(f). By such failure of Mrs. Kelly to properly protect her seniority, we are of the opinion that the date of her seniority should be corrected to show November 27, 1950. The Organization indicates in the record that such date is satisfactory and therefore Item No. 1 of the claim should be sustained.

In respect to the monetary claims referred to in Item 2 of the docket before us, such claims are made by employees for compensation allegedly due them, as a result of being deprived of work brought about by Mrs. Kelly having exercised her seniority, the date of which it is alleged to be improper and incorrect. Rule 3-D-1(a) (b) provides for the method to be used to protect names appearing on the seniority roster. Such protest must be made within sixty (60) days from the date the name appears on the roster. The record shows no protest of any nature has been made or filed with Carrier by interested employees or the Organization, although the name of Mrs. Kelly appeared on each roster for the years 1946 to 1950, inclusive.

Rule 4-D-1(a) provides the method of procedure in presenting claims for compensation, such as we have in Item 2 of the claim. This rule provides a specific and mandatory manner by which such claims shall be presented. The employees and the Organization have wholly failed to follow such required procedure in presenting such claims, and they should be dismissed, for reasons stated.

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

Claim shall be sustained as to Item 1.

Claim 2 sustained as to Mrs. Ellen Kelly's correct seniority date being November 27, 1950; but dismissed as to compensation requested as per Opinion.

AWARD

Claim sustained in part and dismissed in part as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 8th day of July, 1955.