

 Award No. 16442
Docket No. CL-17173

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6279) that:

1. Carrier violated the rules of the Clerks' Agreement when it terminated the seniority of employe Sally Butler for failure to report for Position No. 5131 at Deer Lodge, Montana on March 7, 1966.

2. Carrier shall be required to restore employe Sally Butler's seniority and regard her on leave of absence.

EMPLOYEES' STATEMENT OF FACTS: Employe Sally Butler, who has a clerical seniority date of November 23, 1943 and a non-clerical seniority date of January 16, 1946 in Seniority District No. 44, is a furloughed employe, and is so shown on the seniority roster for that district issued January 4, 1966.

Employe Butler waived her rights to return to service on positions or vacancies of less than 30 days' duration as provided in Section (d) of Rule 12, and on January 12, 1966 accepted employment with the Montana Power Company at Butte, Montana.

Employe Butler resides in Butte, Montana with her mother, who is 69 years of age.

Under date of March 4, 1966, Superintendent W. F. Plattenberger addressed the following letter to employe Butler at Butte, Montana:

"As there were no applicants to my Bulletin No. 7 of February 24, 1966, for Position 5131, copy attached, this resulted in a vacancy of 30 days, and, therefore, in accordance with Rule 12(d) of the Brotherhood of Railway Clerks' Schedule, you are hereby recalled for said vacancy and therefore arrange to report at Engineering Office at 8:00 A.M., Monday, March 7, 1966."

CARRIER'S EXHIBIT F - Letter written by Mr. S. W. Amour, Vice President-Labor Relations, to Mr. Hopper under date of August 19, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: As of March 4, 1966, Claimant was a furloughed employe who had waived her rights to return to service on positions or vacancies of less than thirty (30) days' duration in accordance with Rule 12(e) of the schedule agreement in effect between the parties here in dispute which reads in pertinent part as follows:

"Furloughed employes desiring to waive their rights to return to service on positions or vacancies of less than thirty (30) days' duration may do so by filing written notice with the proper officer as defined above, . . ."

On March 4, Miss Butler was recalled to service, in accordance with the provisions of Rule 12 (d), to fill a vacancy of 30 days', or more, duration on Steno-Clerk Position No. 5131 at Deer Lodge, Montana, which is located approximately forty (40) miles from Butte, Montana, where Claimant resides. Rule 12 (d) reads as follows:

"When forces are increased or vacancies occur, furloughed employes when available, shall be recalled and returned to service in the order of their seniority, and employes shall be required to return when so called. Available furloughed employes recalled for extra work shall be required to return when called except as provided in Section (e) of this rule. Furloughed employes failing to return to service for extra work when called and furloughed employes failing to return to service for other than extra work within seven (7) days after being notified (by mail or telegram sent to the last address given) will be required to give satisfactory reason for not doing so; otherwise, they will terminate their seniority."

The record discloses that Claimant, following receipt of her recall to service of March 4, 1966, wired the Superintendent on March 7, 1966, that she would be "unable to report due to illness of my mother." The record further discloses that in a letter dated March 11, 1966, Claimant submitted a doctor's statement to the effect that Claimant's mother had "lately become invalided because of a heart condition, and that she should have someone readily available in case of emergency and also to help care for her", and, further, Claimant requested a 90-day leave of absence.

The Carrier took the position that Claimant per Rule 12 (d) did not give a satisfactory reason for not returning to service and, therefore, terminated her seniority.

The Employes, however, in the handling of this case on the property, as well as before this Board, have argued that Claimant's reason was satisfactory, and that pursuant to Rule 25 (a) of the controlling agreement, Claimant should have been placed on leave of absence. Rule 25 (a) reads as follows:

**"RULE 25. LEAVE OF ABSENCE
(SICKNESS OR PHYSICAL DISABILITY)**

(a) An employe detained from work because of sickness or disability shall notify his Supervising Officer as early as possible; an employe detained from work because of sickness or personal injury of himself or an immediate member of his family will be regarded as on leave of absence, and his return to service will be governed by the provisions of Rule 23 (e). In maternity cases the leave of absence shall not extend beyond thirty (30) days after birth of child and the provisions of this Rule 25(a) will govern extension of the leave beyond that period."

We have carefully considered all of the facts in this case, and have concluded that pursuant to Rule 25 (a), quoted above, Claimant should have been placed on leave of absence due to the "sickness . . . of an immediate member of . . . family." We will sustain the claim.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 Carrier violated the Agreement.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 21st day of June 1968.