



Award Number 17550

Docket Number CL-18037

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6556), that:

1. The Carrier violated the current Clerks' Agreement when on December 13, 1966, it removed Clerk Mary Jane H. Newcomb from the payroll account her absence from duty due to inclement weather.
2. The Carrier shall now compensate Clerk Mary Jane H. Newcomb for all wage loss suffered by her on December 13, 1966.

EMPLOYEES' STATEMENT OF FACTS: At the time this claim arose, Claimant was assigned to the position of Steno-Clerk in the Carrier's Relief and Pension Department, Seniority District No. 16, in the Carrier's General Office Building at Roanoke, Virginia. Her Group 1 seniority date in this seniority district is November 1, 1965.

Claimant resides in Buchanan, Virginia which is approximately thirty highway miles northeast of her work location in Roanoke, Virginia, and she commutes daily by automobile. The Carrier does not operate any passenger trains between these two communities.

On December 13, 1966, the general area was in the grasp of a severe snow storm which rendered many highway practically impassable. On this date Claimant left her home intent upon reporting for duty on her 8:00 A.M. assignment, but after driving some four or five miles, road conditions were such that further progress was impossible. The Carrier was put to no extra expense on this date as her position was not filled and the duties thereof were performed by Claimant upon her return to duty on the following day. However, she was removed from the payroll and her monthly salary for December, 1966, was proportionally reduced.

The payment of an employee's wages when such employee is absent from assignment on account of an unavoidable cause, such as herein involved, and which does not result in additional expense to the Carrier is a well-established practice of many years duration on this railroad. Further, the current Agreement which became effective January 1, 1965, contains the following rule:

1965, copies of which are on file with your Board and which agreement is, by reference, made a part hereof. Rule 2 of that agreement provides for the establishment of seniority districts in the various departments of the Railway Company. In that rule the Carrier's Relief and Pension Department (now designated as Employee Benefits Department) is listed as Seniority District No. 16.

Mrs. M. H. Newcomb, the Claimant in this case, was employed and established seniority date as Steno-Clerk in Seniority District No. 16 as of November 1, 1965. She was still so employed on December 13, 1966, the date of claim involved in this case.

Roanoke, Virginia is the site of this Carrier's General Headquarters Offices, and the Employee Benefits Department is located in the Carrier's General Office Building at Roanoke. On Sunday, January 30, 1966, a snow fall occurred in the Roanoke area which resulted in nearly 500 clerical employees failing to report and work on Monday, January 31, 1966. For this reason, notices were posted in the various departments at Roanoke in February, 1966 to notify the employees that "Employees who fail to report for work allegedly on the account of adverse weather conditions will not be paid for the day or days lost on this account".

Mrs. Newcomb, the Claimant in this case, lives in Buchanan, Virginia, which is a town located about 25 miles north of Roanoke. Mrs. Newcomb reported and worked on Monday, December 12, and Wednesday, December 14, 1966. However, account adverse weather conditions, Mrs. Newcomb did not report and work on December 13, 1966. For this reason, one day's pay was withheld from her earnings for the first half of December, 1966.

The Employees filed claim reading as follows:

"Claim of the Local Committee of the Brotherhood that the Carrier violated the current Clerks' Agreement as amended when on December 13, 1966, it removed Clerk M. H. Newcomb from the payroll account of her absence from duty due to inclement weather conditions.

"The facts in this case are that Clerk Newcomb, who lives in Buchanan, Va. a distance of about 30 miles from the office attempted to get to work but road conditions got so bad that after driving some 4 or 5 miles she decided that the prudent thing to do was to return home, it being a much shorter distance than the remaining distance to the office. Also it is the understanding of this Committee that no extra expense accrued to the Company due to claimants absence from duty on this date because the duties of her position were left for her to perform when she returned to duty the following day.

"And that claimant M. H. Newcomb now be compensated for all wage loss suffered by her on December 13, 1966."

The Carrier declined the claim.

(Exhibits Not Reproduced)

OPINION OF BOARD: At the time this claim arose, Claimant was assigned to position of Steno-Clerk in Carrier's Relief and Pension Department, in Roanoke, Virginia.

Claimant resided in Buchanan, Virginia, approximately twenty-five to thirty miles north of her work location and commuted daily by automobile.

On Monday, December 12, 1966, Claimant fulfilled regular hours of her work position (8:00 A.M. to 5:00 P.M., Monday through Friday).

It is undisputed that there was a heavy snow storm in this area on December 13, 1966. Employee failed to appear at work and was absent for all her scheduled hours that day. Her statement is not contested that she left her home for work that morning but found, after driving some four or five miles, that the road conditions made further progress impossible. She worked her regular schedule on the next day, December 14, 1966. It is not disputed that Claimant's position was not filled by any one on December 13th.

Carrier subsequently withheld one day's pay from Claimant for the day of her absence. Employees seek restitution of this deduction on the grounds that this was a deprivation of a five-day week, which, they contend, is assured to position holders by Rule 44 of the Agreement. In Employees' view, this assurance extends to guarantee of pay if on any of the five days neither the incumbent or any other employee is used, as was the case here.

Carrier's position is that Rule 44 was not violated, inasmuch as Carrier fulfilled its obligations under said rule by making available full employment for the Claimant on the day in question and her non-performance did not result from any action of Carrier.

We find no evidence that Carrier instituted in this situation, a "reduction of days . . . or positions below five per week", the actions proscribed by Rule 44. Therefore said rule, relied on by Employees does not support the instant claim. The claim will therefore be denied.

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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.

Central Publishing Co., Indianapolis, Ind. 46206

Printed in U.S.A.