

Award No. 19059
Docket No. CL-19154

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6934) that:

1. The Carrier violated the understanding and provisions of the Clerks' Agreement, particularly, the Scope Rule Exception No. 4, Rules 2-A-9, 3-C-1, 6, 7-A-2, 9-A-1, 9-A-2, among others, when it unfairly and unjustly with coercion removed Chief Timekeeper Dorothy E. Rudolph from her regular assigned position and forced her under protest to go on the extra list effective 5 P.M. Friday, Jan. 30, 1970.

2. The Carrier will pay Claimant Rudolph a day's pay at the rate of the Chief Timekeeper (her regular assigned position) in addition to the rate of the positions on the extra list she was forced to work effective February 2, 1970 and for each day thereafter until the violations are corrected and Chief Timekeeper Rudolph is reinstated to her regular assigned position.

EMPLOYEES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective July 1, 1945 and a revised Agreement effective January 1, 1965, which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, as amended, and also with the National Railroad Adjustment Board, covering clerical, other office, station and storehouse employees, between this Carrier and this Brotherhood. The Rules Agreement will be considered a part of this statement of facts. Various Rules and Memorandums therefore shall be referred to from time to time without quoting in full.

This dispute involves the Carrier's action in arbitrarily and unjustly removing Chief Timekeeper Dorothy Rudolph from her regular assigned position without a sufficient reason and is a deliberate violation of Rule 2-A-9, among others in accordance with the Rules of the Clerks' Agreement by failing to give Claimant the right to a formal Hearing, Investigation or Trial, before imposing discipline.

Claimant Rudolph had held this Chief Timekeeper position from November 1968 to January 30, 1970 and at no time had her work been ques-

A copy of that letter is attached and identified as "Carrier's Exhibit No. 11."

Under date of April 30, 1970, Manager-Disbursements Accounting Porto addressed a joint letter to Vice President Van Wart and General Chairman Hewson, submitting therein the Carrier's Ex Parte Statement of Facts in accordance with Memorandum of Understanding No. 4. A copy of that letter is attached and identified as "Carrier's Exhibit No. 12."

Under date of April 29, 1970, the Local Chairman addressed a joint letter to General Chairman Hewson and President Schlager giving the Employees' Ex Parte Statement of Facts in accordance with Memorandum of Understanding No. 4. A copy of that letter is attached and identified as "Carrier's Exhibit No. 13."

Under date of April 29, 1970, the Local Chairman wrote Manager-Disbursements Accounting Porto advising him that he was rejecting the decision to deny the claim and was forwarding all papers to the General Chairman for further handling. A copy of that letter is attached and identified as "Carrier's Exhibit No. 14."

Under date of May 20, 1970, the General Chairman appealed the Manager-Disbursements Accounting Porto's denial decision to Mr. W. L. Schlager, Jr., President, the highest officer of the Carrier designated to hear appeals. A copy of that letter is attached and identified as "Carrier's Exhibit No. 15."

Under date of June 10, 1970, President Schlager advised the General Chairman that arrangements had been made for his representatives in the Personnel Relations Department to hear the appeal on June 15, 1970. A copy of that letter is attached and identified as "Carrier's Exhibit No. 16."

The appeal hearing scheduled for June 15, was postponed and under date of June 17, 1970, President Schlager wrote the General Chairman arranging for the hearing to be held on June 23, 1970. A copy of that letter is attached and identified as "Carrier's Exhibit No. 17."

Under date of July 14, 1970, President Schlager wrote the General Chairman denying the appeal saying, in pertinent part:

"At the aforesaid meeting you were advised that the removal of Clerk D. E. Rudolph from the Chief Timekeeper position (under Exception No. 4) was not in violation of any rule of the controlling Agreement.

The Third Division of the National Railroad Adjustment Board has upheld this Carrier's position in a similar case."

A copy of that letter is attached and identified as "Carrier's Exhibit No. 18."

Under date of January 12, 1971, C. L. Dennis, International President, Brotherhood of Railway, Airline & Steamship Clerks, Freight Handlers, Express and Station Employees, wrote Mr. S. H. Schulty, Executive Secretary, advising the Employees' intention to submit this unresolved dispute to Your Honorable Board for adjudication. A copy of that letter is on file with Your Honorable Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant held the position of Chief Time Keeper from October, 1958, until January 30, 1970. This position was an excepted

position under Exception No. 4. On January 30, 1970, Claimant was removed from the position. The record discloses that on January 2, 1970, the Manager-Disbursements Accounting addressed a memorandum to Claimant. This memorandum reviewed the performance of Claimant in the function of her position and set out specific instances of her dereliction in the performance of her duties. On January 29, 1970, the memorandum was issued by the Manager-Disbursements Accounting to Claimant notifying Claimant of her removal and referred to a conference held in the office of Manager-Disbursements Accounting on January 28, 1970, wherein reasons for removal were given. This memorandum also suggested to Claimant that she avail herself of the right to exercise seniority under Rule 2-A-9. The Organization complains that Carrier did not comply with Rule 7-A-2 which requires that Carrier furnish a reason for removal of an incumbent from this position. The Organization also alleges that Carrier does not have an Excepted Position Rule like many other railroads which stipulate that Management has the right to remove an employe from an excepted position, and that, therefore, this Carrier must follow the procedures outlined in Rules 2-A-9, 6 and 7, which restricts Carrier from unilaterally removing an employe from an excepted position. The Organization relies chiefly upon sustaining Award No. 17293 (Yagoda). This Board finds that Award 17293 (supra) was sustained for the reason that Carrier failed to give a valid reason for removal and transfer of an incumbent excepted position. Award No. 17293 involved the same parties appearing in this dispute. This Board finds that in this instance, Carrier did comply with Rule 7-A-2. Reasons for removal were given in writing as well as in conference. The Conference was attended by both Claimant and her Organizational representative. Therefore, Award No. 17922 (Devine) is controlling in this dispute. Award 17922 was a denial award involving these same parties and discusses Awards 17293 as follows:

"* * * Both parties have referred to our Award 17293 involving the same Agreement. Each dispute must, of course, be decided on the basis of the record before the Board. It is apparent that elements were present in the dispute covered by Award 17293 that are not present herein. For instance, it was found in that case that the Claimant had not been given any reason for removal from the excepted position. In the dispute herein reason was given. In our present dispute also the Carrier has submitted evidence as to the application of Rule 2-A-9, which the Board found lacking in the dispute covered by Award 17293."

Also, this is not a disciplinary matter as contemplated by Rule 6. See Awards 17293 and 17922. Where Carrier has the prerogative and discretion to appoint employes to positions, Carrier also has the prerogative and discretion to remove such employes absent arbitrary or capricious conduct on the part of Carrier. See Awards 12419 (Coburn), 13048 (Wolf), 2350 (Carter) and others. This claim will 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 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March 1972.