NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20581
THIRD DIVISION Docket Number CL-20617

Robert A. Franden, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7477) that:

1. Carrier violated the Clerks' Agreement and abused its discretion when it removed Mrs. P. D. Warren from its service at the end of her tour of duty on September 29, 1972.

2. Carrier shall now be required to compensate Mrs. Warren for 8 hours' pay at the rate of $37.31 per day, beginning October 2, 1972, and continuing for each work day, Monday through Friday thereafter, until she is returned to service with all rights unimpaired.

3. Claim is to include any subsequent increase in the rate of pay stated above, which was the rate of pay of the position she was working on September 29, 1972.

OPINION OF BOARD: Claimant was employed by Carrier on May 3, 1972. As a condition of her employment, she was required to submit a letter of resignation, which reads as follows:

"Wichita, Kansas
May 1, 1972

Mr. J. C. Love, Jr.:

Please accept this as my resignation as a clerk, effective September 29, 1972.

/s/ Phoebe Dean Warren
Phoebe Dean Warren"

On August 8, 1972 Claimant wrote Carrier's superintendent the following letter in an attempt to void the resignation letter of May 1, 1972:

"Wichita, Kansas
August 8, 1972

Mr. D. W. Welch, Supt.
Kansas City, Missouri

Please cancell and return my resignation dated September 29, 1972.

/s/ P. D. Warren
P.D. Warren, Clerk
2662 Garland
Wichita, Kansas 67204"

It is the Carrier's contention that the letter of resignation was an essential condition of Claimant's employment contract which could not be unilaterally changed. There is no question but that the signing of the May 1 letter of resignation was a requirement Claimant had to meet before being employed.

The Organization has put at issue the right of the Carrier to utilize letters of resignation to form the basis of the employment term as the Carrier did here. The Organization contends, inter alia, that the Carrier does not have the right to make individual employment contracts which contravene the provisions of the negotiated agreements. The Organization argues that after sixty (60) days of service the Claimant established seniority in accordance with the Agreement.

What are the rights of the Carrier in entering into individual employment contracts? There have been cited to us two United States Supreme Court cases which dealt with this issue, J. I. Case Co. v. National Labor Relations Board, 321 U.S. 332 and Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342. Both of the cases have held that the collective bargaining agreement must take precedence over contracts with individual employes.

In the instant matter, Rule 18 (a) of the schedule agreement provides:

> "An employe who has been in the service more than sixty (60) days, or whose application has been formally approved, shall not be disciplined or dismissed without first being given a fair and impartial investigation."

Under normal circumstances the employment of Claimant could not be terminated without compliance with 18 (a) after she had been in the service of the Carrier for sixty (60) days dating from May 3, 1972. We do not believe the Carrier can deprive Claimant of her rights under 18 (a) by making a different "arrangement" with her at the inception of her employment. If the Carrier were allowed to do this with regard to the employment term why would the same reasoning not apply to other aspects of the employer-employe relationship?

An Employe has the right to resign at any time. Once the Carrier has accepted a resignation given without duress or coercion it may not be unilaterally withdrawn. A resignation obtained as a condition precedent to employment which deprives the employe of the protection of certain provisions of the Collective Bargaining Agreement is clearly distinguishable.

The National Vacation Agreement was negotiated by the parties to give the Carrier relief from the problems of employing temporary help. Section 12(c) provides that a person hired for vacation relief help will not establish seniority for sixty (60) days. If this negotiated provision does not satisfy the Carrier's needs, then it is a matter for the bargaining process.

We are cited Award No. 9 of PLB No. 400, Brotherhood of Railroad Trainmen v. Missouri Pacific Railroad Company, which award held valid a resignation submitted when hired. Without commenting on the efficacy of that award, we note that it states "This handling applies to summer employment only and does not extend to men who hire out for other than summertime jobs". The case at hand involves some five months commencing in mid Spring and ending in early Fall.

Inasmuch as we find that the Agreement between the parties must take precedence over the individual employment contract we must find that the manner of terminating the Claimant should have been in accordance with that Agreement.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 17th day of January 1975.