

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20672
Docket Number CL-20686

William M. Edgett, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
PARTIES TO DISPUTE: (
(Chicago, Milwaukee, St. Paul and Pacific Railroad
(Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7514) that:

1. Carrier violated and continues to violate the Clerks' Rules Agreement when it unjustly treated employee N. L. Cortopassi by improperly terminating her seniority and dismissing her from Carrier service on January 25, 1973.

2. Carrier shall be required to restore employee N. L. Cortopassi's seniority rights unimpaired and compensate her a day's pay at the rate of her respective position for each day that she would have been entitled to be recalled under the provisions of Rule 12(d) from January 25, 1973 and all subsequent dates until the violation is corrected; reparations to be determined by a joint check of the Carrier's records.

OPINION OF BOARD: The Claimant herein was a furloughed, unassigned employee on January 24, 1973 and governed by the provisions of Rule 12, "Reducing Forces," Paragraph (d) of which provides in part:

"When forces are increased or unfilled vacancies occur, furloughed employees, when available, shall be recalled and returned to service in the order of their seniority and employees shall be required to return when so called, Furloughed employees failing to return to service for extra work when called and furloughed employees 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." (Emphasis supplied)

In letter of January 25, 1973, Assistant Agent Mr. Rebesco advised Claimant as follows:

"For your failure to give a satisfactory reason for failing to report to serve for extra work when called on January 24, 1973.

"You have terminated all clerical seniority rights you have accrued in all clerical districts in which you have accrued these rights."

As a result, Claimant requested investigation under provision of Rule 22(g), contending she had been dismissed without the investigation required by Rule 22(a). Notwithstanding Carrier's defense on the property that no hearing was required under the circumstances, i.e., that Claimant had terminated her seniority rights by failing to respond for work, and failing to give satisfactory reason for not doing so, it nonetheless set a date for an investigation, which was held February 15, 1973. The decision rendered on February 23, 1973 was that Claimant's charge of unjust treatment was unsubstantiated and wholly without factual and/or schedule rule support.

The transcript of the investigation held February 15, 1973 (Carrier's Exhibit A) reveals that on January 24, 1973 the Claimant was telephoned to protect a vacant keypunch position, such call being made at 11:45 AM by the Chief Yard Clerk. That fact is not disputed; the conversation that obtained between Claimant and the Chief Yard Clerk and subsequently between Claimant and the Assistant Agent is disputed, however.

Claimant testified:

"I answered the phone and he told me that there was a job at 3:00 p.m. and he needed me to come in. I told him that I would if I could but I had been up all night and it wouldn't be fair for me to come into work and be as inaccurate as I would have been.*** At approximately 10 minutes later, Mr. Rebesco called me and he asked me why I was not going to come in. I told him that I had been up all night ill."

The Board is confronted with conflicting testimony, i.e., Claimant avers that she did in fact advise that she was ill, which was the reason she could not protect the keypunch position, whereas both the Chief Yard Clerk and the Assistant Agent testified that neither of them had been so advised. The Claimant, having been put on notice by the Carrier that her reasons for failing to report when called for duty under the provision of Rule 12(d) were unacceptable, had sufficient time (until February 15, 1973, the date of her requested hearing) to present to the Carrier proof of her illness as a condition of her continued employment. In light of the lack of such proof in the Record and the conflict in testimony at the investigation, we must conclude that this claimant did terminate her seniority rights under the provisions of Rule 12. Awards 5799 (Carter), 10404 (Mitchell), 12993 (Hall). The claim is 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

The Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1975.