

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20718
Docket Number MS-20662

William M. Edgett, Referee

PARTIES TO DISPUTE: (Mrs. Maybelle Frankenstein
(Chicago, Milwaukee, St. Paul and Pacific Railroad
(Company

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex Parte submission on March 12, 1974 covering an unjusted dispute between me and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company involving the question:

"My removal from the position of Assistant Bureau Head in the office of Mr. J. M. Conway, Manager-Equipment Accounting by notice from Mr. J. C. Manders, Manager-Accounting Administration was a direct result of discrimination due to my refusal to be coerced into donating to the United Fund because of personal conscientious beliefs. Related thereto was refusal to grant a two day leave of absence because of prejudice."

OPINION OF BOARD: Claimant made a request to be absent from her position on October 8 and 9, 1973 to take care of personal business. On October 5, 1973, Carrier advised her in writing that her request was not approved. In spite of Carrier's disapproval Claimant did not protect her position on the 8th and 9th.

On October 18 Carrier preferred the charges against claimant which read:

"Please be advised that charges are hereby preferred against you as follows:

1. For allegedly failing to protect your regular assignment on October 8 and 9, 1973.
2. For allegedly being insubordinate to your supervising officer on October 8, 1973.

Investigation in connection with the aforementioned charges being preferred against you will be held in Room 740, Union Station Building, 516 West Jackson Blvd., Chicago, Illinois

"at 10:00 a.m., on October 24, 1973.

At the investigation you may be represented by one or more duly accredited representatives.

Yours truly,

(s) J. C. Manders"

The investigation was held and the decision rendered within the time limits provided by Rule 22(a) and (b). Claimant was removed from the position of Assistant Bureau Head in the office of the Manager of Equipment Accounting. The contractual result of that removal was that Claimant, under the governing rules, could perform extra work or bid for any vacancy or new position which was bulletined. She could not, under the terms of the Agreement, exercise displacement rights over a junior employee occupying a position. In effect she was furloughed and was governed by Rule 72(d), which reads:

"(d) 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.

If an employee, after filing his name and address, is recalled to service and is, at that time, working on a regular assignment in his other seniority district, that will be considered a satisfactory reason for not returning to work upon recall as provided in Rule 12(d). The Carrier, under such circumstances, will not be required to again call this employee for service until he is again unemployed and files his name and address in accordance with Rule 12(b). NOTE: The work 'unfilled' as used in Paragraph (d) of this rule means a position or vacancy that remains to be filled after the provisions of other rules of the agreement have been complied with."

On November 14, 1973, Claimant was advised of an unfilled vacancy, which her seniority would entitle her to fill. The letter to Claimant stated:

"November 13, 1973

File: 150-Employees-General
Frankenstein, M.K.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mrs. Maybelle Frankenstein
629 Kenwood Avenue
Libertyville, Illinois 60048

Dear Mrs. Frankenstein:

Attached hereto is a copy of Bulletin No. 282 dated November 6, 1973 advertising Sorter Grade 'B' Position No. 42840 in the office of Manager-Revenue Accounting in Seniority District No. 71.

There were no applicants for said position, consequently there exists a vacancy thereon for which you are hereby being recalled in accordance with the provisions of Rule 12(d) of the Clerks' Rules Agreement.

Please arrange to report to Mr. D. C. Fish within the prescribed time period as set forth in Rule 12(d).

Yours truly,

(s) J. C. Manders"

Claimant did not return to Carrier's service or give a satisfactory reason for not doing so and therefore she terminated her service under Rule 12(d) of the Clerks' Agreement.

Claimant has asserted that the removal from her excepted position was improper because it was based on an alleged improper motive. She relates that her refusal to contribute to the United Fund caused Carrier to retaliate and deny the request for time off. It does appear that the request did fall in a peak period. In any event the request had been denied and in spite of this Claimant took the time off. She should have complied with Carrier's direct order and protested the denial in an orderly fashion.

After the investigation and her removal from her position Claimant could have filed a protest as provided in Rule 22(c). She failed to do so. She also failed to respond to the notice of recall and under the governing rule she therefore terminated her seniority.

Both her failure to proceed under Rule 22(c) and her failure to respond to recall require the Board to deny her 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 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: A.W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 16th day of May 1975.