

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22499  
Docket Number CL-22618

Paul C. Carter, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and  
{ Steamship Clerks, Freight Handlers,  
{ Express and Station Employes  
{  
{ The Chesapeake and Ohio Railway Company  
{ (Chesapeake District)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-8596) that:

Claim No. 1:

Claim for being held off position in violation of Clerks' Agreement Doctor's approval August 19, 1976.

Claim No. 2:

(a) The Carrier violated the Clerks' Agreement particularly Rule 27 and others when beginning August 23, 1976, Ruby Ball was held out of service without according her an investigation.

(b) That Ruby M. Ball be restored to service and compensated all wages and wage equivalents lost because of the Carrier's violative action.

Claim No. 3:

(a) The Carrier violated the Clerks' Agreement, particularly Rules 28F and 27 and others when it refused to allow Ruby M. Ball to return to duty following sick leave and held her out of service without a hearing within the ten (10) days held out of service.

(b) And when she was granted a belated hearing one hundred and fifteen (115) days after being withheld from service, she was arbitrarily dismissed without justification or proof that she had forfeited her seniority.

(c) That Ruby M. Ball be immediately returned to service and compensated for all wages, wage equivalents and fringe benefits that she would have been entitled to had she not been arbitrarily removed from service.

OPINION OF BOARD: Much of the handling of this dispute on the property and the submissions of each party consist of contentions and counter-contentions that one or more of the claims was not timely denied or not timely appealed under the applicable time limit rules. Without passing on all the contentions and counter-contentions with respect to time limits, except to hold that the claim is properly before the Board, we will decide the dispute on its merits. The fact that claims handled separately on the property were combined by the Organization in submission to the Board did not expand or alter the claims. The Carrier was in no way misled.

Under Rule 28(b) of the applicable agreement employees sick or injured are not required to secure leaves of absence.

Rule 28(c) provides:

"Employees failing to return to service at the expiration of leave of absence shall be considered out of the service, except when failure to report on time is the result of unavoidable delay, in which case the leave will be extended to include such delay."

Claimant went on sick leave in December 1974, under the care of Dr. R. G. Arrington, who made a diagnosis of "Chronic Obstructive Pulmonary Disease. Vital Capacity 74% of normal. Chest Xray shows emphysematous configuration." On July 31, 1975 the doctor advised that she had failed to improve and she might have to seek disability retirement. On August 18, 1976, claimant's doctor advised her that she could return to duty, effective Monday, August 23, 1976. Claimant then advised the Carrier's Chief Engineer that she wished to displace on C-78, clerk-typist position, effective Monday, August 23, 1976.

The Carrier required the claimant to undergo medical examination to determine if she was physically qualified to return to service. The last report in the record concerning claimant's physical condition was dated October 15, 1976 (Carrier's Exhibit 6.)

The Carrier learned that claimant had taken trips to the Middle East and to Switzerland in 1975 and again in 1976. Carrier stopped paying her sick benefits on July 9, 1975, on the ground that Carrier believed that she was no longer too ill to return to work. Carrier's primary position is that claimant forfeited her seniority in May, 1975, under Rule 28(c), when she was able to return to work and did not do so.

A so-called "show-cause" hearing concerning claimant's alleged forfeiture of seniority was held on December 16, 1976, at which time claimant read and presented the following statement signed by Dr. Robert G. Arrington:

"November 10, 1976

TO WHOM IT MAY CONCERN:

Mrs. Ruby M. Ball has been under my care from December 4, 1974, to July 9, 1976. (List of dates furnished on separate sheet.)

On July 9, 1976, Mrs. Ball came in to discuss the possibility of her taking a Tour to the Holy Land, beginning July 12, and ending August 2, 1976, a three-week vacation.

In the resulting discussion, I advised her that, although she was not able to work an 8-hour, 5-day-a week position, I believed that she could travel with a group who would see that she received medical attention, should the need arise for it. I further advised her to rest as much as possible on the Tour, enjoy, and report back to me on her return.

Date August 5, 1976 shows Mrs. Bell came to Clinic, complaining of weakness and nausea. She said she had seen Physician in Rome, Italy on first night after landing in Rome, because of intestinal infection contracted, evidently the previous day in flight. Was ill remainder of Tour and unable to travel alone back to United States.

On August 18, 1976, Mrs. Ball reported to Clinic and requested that she be returned to her position on Chessie System and that she felt fine, now that infection had cleared up completely. I released her on that date as being able to report back for duty on the Chessie System, effective date Monday, August 23, 1976, 8:00 A.M.

(Sgd) Robert G. Arrington, M.D.  
ROBERT G. ARRINGTON, M.D.

CC: Mr. Vealey, Local Chairman  
Mr. Henry, PRC of ERAC"

The record does not show that Carrier notified claimant of her alleged forfeiture of seniority until after the "show cause" hearing of December 16, 1976.

In the railroad industry an employe's seniority right has always been considered a valuable right, which may not be terminated by a Carrier on the basis of speculation, supposition, or assumption. Based on the entire record, the Board finds that Carrier improperly concluded that claimant had forfeited her seniority. In the on-property handling it was shown that claimant had applied for a regular full retirement and was granted same by the Railroad Retirement Board. The Board now understands that her retirement was effective April 1, 1978.

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We will award that claimant be compensated at the rate of pay of the C-78 position from October 15, 1976, the date of the last report concerning her physical condition, to April 1, 1978. In all other respects the claim is denied.

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**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 to the extent shown in Opinion.

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Claim sustained to the extent indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of August 1979.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 to AWARD NO. 22499

DOCKET NO. CL-22618

NAME OF ORGANIZATION: Brotherhood of Railway, Airline and Steamship Clerks,  
Freight Handlers, Express and Station Employees

NAME OF CARRIER: The Chesapeake and Ohio Railway Company  
(Chesapeake District)

Upon application of the representatives of the Employees involved in the above Award, that this Division interpret the same in light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

On August 31, 1979, this Board issued Award No. 22499, involving the parties hereto, in which we held:

"We will award that claimant be compensated at the rate of pay of the C-78 position from October 15, 1976, the date of the last report concerning her physical condition, to April 1, 1978. In all other respects the claim is denied."

A dispute developed between the parties as to the interpretation or application of the quoted language, and on October 26, 1979, the Organization petitioned the Third Division to issue an official interpretation.

The purpose of an interpretation to an award is to explain the meaning of the award as previously made, and not to make a new award, or consider factual issues that were not before the Board when the award was issued.

The record before the Board when Award No. 22499 was issued showed that on August 19, 1976, claimant filed a request to return to service on clerk typist Position C-78. It appears that after Award No. 22499 was issued, the Carrier developed information that the position of clerk typist C-78 was abolished effective with the close of business on July 11, 1976, and no C-78 position existed during the period from October 15, 1976, to April 1, 1978, and Carrier contends, therefore, that claimant is not entitled to any compensation by reason of Award No. 22499.

This latest information may be of interest, but it certainly should have been developed and brought forth in the rather extensive handling by the parties prior to submission of the original dispute to the Board. It now comes too late for any consideration by the Board.

The Board finds the quoted language of Award No. 22499 to be clear and unambiguous and not subject to interpretation. It should be applied as written.

Referee Paul C. Carter, who sat with the Division as a neutral member when Award No. 22499 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

*A. W. Paulson*  
Executive Secretary

Dated at Chicago, Illinois, this 18th day of April 1980.

MAY 10 1980  
CHICAGO, ILLINOIS