

PUBLIC LAW BOARD NO. 2011

AWARD NO. 12

CASE NO. 13

PARTIES TO THE DISPUTE:

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

and

CHICAGO AND ILLINOIS MIDLAND RAILWAY COMPANY

STATEMENT OF CLAIM:

Claim of the System Committee of the Brotherhood that:

1. Carrier violated the Agreement between the parties when it improperly removed furloughed Clerk M. S. Fritch from its seniority roster by letter dated March 30, 1978, alleging she was in violation of Rule 19 of the Agreement.
2. Carrier shall now be required to return Clerk Fritch to service with a seniority date of September 25, 1976, and compensate her for all losses sustained due to junior employees being utilized on various positions subsequent to her being removed from the Clerks Seniority Roster.

NOTE: Without any difficulty whatsoever it can easily be determined by joint check just who the junior employees were beginning with junior employee J. W. Stender who was named in the original letter of claim dated May 13, 1978.

OPINION OF BOARD:

Claimant entered service of Carrier on September 25, 1976 and worked as a Yard Clerk at Powerton. Her position was one of two abolished on November 10, 1977 as the result of a work stoppage. Rule 19 of the Agreement applies to employees in Claimant's situation and reads as follows:

RULE 19Reducing Force

Employees desiring to protect their seniority rights and avail themselves of this rule, must within ten (10) calendar days from the date actually reduced to the furloughed list, file their names and address in duplicate in writing, both with the proper official (the officer authorized to bulletin and award positions) and Local Chairman and advise of any change in address within ten (10) calendar days or forfeit all seniority rights, except in cases of personal illness or other unavoidable causes. The official and Local Chairman shall sign and return to the employee as his receipt one copy of the address or change in address so filed.

The record shows that Claimant neglected to file in writing her name and address within ten (10) days of her furlough date in November 1977. However, that failure was waived by Carrier as part of a settlement between Claimant, Carrier and the Organization, dated December 19, 1977, reading as follows:

Dear Miss Fritch:

This will confirm our conference at 2:00 P.M. on December 14, 1977 regarding my letter to you of December 9th at which time I took under consideration the reasons you gave for not realizing you had forfeited all seniority rights under the agreement for clerks, effective December 3, 1977.

I am also in receipt of a copy of the Manager of Personnel's letter to you dated December 15, 1977 indicating he had deferred his decision on your discipline appeal to him to permit a possible settlement of all matters involving your employment relationships.

I am agreeable to settling these matters on the following conditions:

1. The time requirement provisions of Rule 19, in which you may properly file a furlough form or your name and address are extended for thirty (30) days, with concurrence of a duly authorized clerks representative, to permit you to do so.
2. At such time as you properly file a furlough form or your name and address and receipt is acknowledged by me and the Local Chairman, you will be considered reinstated with seniority rights thereafter unimpaired.

3. At such time as you desire to again be considered available to perform service for this company, you will evidence that you have a reliable means of transportation from your residence to your work location and that you have obtained (and will maintain) a means of ready telephone communication.

4. Your rejection/appeal dated November 9, 1977 of my decision dated October 27, 1977 is withdrawn with the payment of 2-1/2 days' compensation at the rate of your last regular assigned position from which you were furloughed.

5. The previously assessed six (6) months probation period is extended to run for six (6) months after your reinstatement of seniority, with the understanding that any subsequent absenting of yourself from service, without obtaining permission, providing satisfactory proof of illness and upon request, furnishing a certificate from a reputable physician in case of sickness, (except in case of accident) is mutually recognized as sufficient cause for dismissal.

6. This settlement is limited to the particular facts and circumstances of the matters here involved.

Yours very truly,

S/ A. S. Alstott

A. S. Alstott
Superintendent

ASA:SRH

cc: Mr. J. D. Singley
Local Chairman - BRAC

ACCEPTED:

S/ M. S. Fritch
M. S. Fritch

S/ J. D. Singley
J. D. Singley, Representative and
Local Chairman BRAC

It is not refuted that Claimant did file proper written address notice on December 19, 1977, listing her mailing address as R.R. 2, Manito, Illinois.

The record shows that Claimant resided during the period August 1977 through March 4, 1978 in a tenant house located on the farm of Mrs. Mary Clayton. The mailing address for that tenant house was the main house of Mrs. Clayton, i.e., R. R. 2, Manito, Illinois. In late February 1978, Mrs. Clayton sold the farm on which the tenant house is located and Claimant was forced to vacate. She was unable to immediately take possession of a new tenant house on the property of Mrs. Clayton's brother, and accordingly she moved into a vacant house trailer behind the brother's barn on March 4, 1978. Unrefuted record evidence establishes that this was expected to be a short-term solution and that she would be in the new house within a week. Extraneous complications prevented closing on the house and accordingly she was not able to move out of the house trailer until April 2, 1978. During this latter period, Claimant notified neither the Carrier nor the U.S. Post Office of a change of mailing address. Instead she made temporary arrangements with Mrs. Clayton to continue to receive her mail at R. R. 2, Manito, Illinois, until she had completed the new move to the new tenant house.

During the month of March 1978, Carrier sent to Claimant's listed mailing address several bulletins regarding available positions. This correspondence never was received by Claimant because the rural mail carrier did not deliver it to R.R. 2, Manito, when he learned on March 6, 1978 that a new tenant was residing in the tenant house. Acting on his own initiative, the local Postmaster thereafter held all of Claimant's mail, including Carrier's notices to her, and after fifteen days returned that mail to sender.

After Claimant moved into the new tenant house she did file a change of address card with the Postmaster and began receiving mail at 1410 Lake Street, Pekin, Illinois, effective April 5, 1978.

In the meantime, however, Superintendent Alstott on March 30, 1978 sent notice to the Acting Local Chairman as follows:

This is to advise that M. S. Fritch who filed furlough form with me dated December 19, 1977 has been sent U.S. Mail to the address listed thereon, i.e. Rural Route #2, Manito, Illinois 61546 and such mail has been returned to me by the Post Office as not deliverable as addressed.

Since M. S. Fritch did not advise me of a proper address or a change of address within ten (10) calendar days, or advise of a personal illness or other unavoidable cause for not doing so, in accordance with Rule 19 she has forfeited all seniority rights.

A meeting was held on April 6, 1978 at which Claimant explained all of the foregoing, orally advised Superintendent Alstott of her new mailing address and apparently also attempted to bid in on a Powerton Yard Clerk assignment vacancy. That bid was rejected and the Superintendent advised Claimant by letter of April 7, 1978 as follows:

Subsequent to your failure to comply with Rule 19 of the union agreement and your forfeiture of seniority under this rule, I have received information that you might be contacted at the above address.

Also, requests for employment on certain positions were subsequently received via company mail and they are returned herewith since you forfeited your seniority in accordance with Rule 19.

Article 8 of the national vacation agreement of December 17, 1941, as amended, grants, when an employee's employment status is terminated for any reason whatsoever, full vacation pay earned up to the time he leaves the service, including pay for vacation earned in the preceding year or years and not yet granted, and the vacation pay for the succeeding year if the employee has qualified thereof under Article 1.

For further handling of this vacation pay due matter and verification with our vacation due records, please advise as to whether you qualify for any amount of vacation in accordance with the above, including the address to which payment, if any due, should be sent.

Your attention is also directed to Rule 4 - Re-entering Service should you desire to complete an application for employment and seek to be re-hired by this company.

At the invitation of the Superintendent, Claimant did fill out another application for employment on April 12, 1978 which later was rejected by Carrier. Under date of May 13, 1978 the present claim was initiated by Ms. Fritch as follows:

I am hereby submitting a claim for the restoration of seniority (9-25-76) and all benefits, and payment for all benefits lost and all wages lost both pro-rata and overtime which I would have earned on the position of Relief Yard Clerk - Pekin Station currently held by J. W. Stender. This is a continuing claim for all lost wages and benefits due to your arbitrarily removing me from service and denying me my seniority rights.

As I stated to you in conference April 6 and again April 11, 1978, I did not change my address until April 2, 1978, and I advised you of this change April 5, 1978, well within the ten prescribed days. Furthermore, I informed you that even after I moved from the house at Rural Route 2, Manito, Illinois I kept the same address and even arranged to receive my mail at the very same box. The Post Office did not deliver my mail to the box, and therefore I did not receive my mail for approximately three weeks in March 1978, at no fault of my own. I checked with the Post Office of Manito to find out where my mail was and with the people who moved into the house I used to live in, and even with the woman who owned the house, Mrs. Mary Clayton. Mrs. Clayton informed you that she even asked the mail carrier where Miss Fritch's mail was. I believe Mrs. Clayton's statements and the other witnesses' statements given to you in conference April 11th clear me of any responsibility in your receiving mail back from my old address.

I checked the Powerton Station at various times and you received my bids on the Powerton Yard Clerk assignments on April 6, 1978, thereby proving my interest and expectation of returning to work after the force reduction.

Since I could not have held a job with the C&IM during the month of March 1978 and I did in fact bid on the first assignments open to me and did not mislead or neglect to send any change of address to you, I feel I should be restored to the service of the C&IM Railway Company with all rights unimpaired.

The claim was denied at all levels of handling by Carrier on the stated grounds that Claimant had failed to file a change of address form under Rule 19 within ten (10) days of moving to the house trailer on March 4, 1978.

It is important to note that this record does not show that Claimant took herself out of service by failing to return to service after receiving a recall notice. Rather, the Superintendent concluded upon receiving the returned mail that she had failed to notify him of an address change pursuant to Rule 19 and he invoked the forfeiture clause contained therein. It was not unwarranted for the Superintendent to entertain that initial impression, but in our judgment his persistence in that position in the face of the unrefuted explanations and evidence presented by the Organization and Claimant was unreasonable and violative of Claimant's rights under the Agreement. The critical point given the facts presented herein is that she was not obligated to give him written notice of a new mailing address when she moved into the temporary house trailer. By all accounts that stay was expected to be of a very short transitional nature until she took up residence in the new tenant house. Rule 19 uses that word "address" rather than "residence" and we are persuaded that the Rule requires notice of mailing address (emphasis added). If Claimant had moved to a new mailing address as of March 4, 1978 and failed to provide written notice under Rule 19, then Carrier would be correct that she came under the self-executing forfeiture provisions of Rule 19 (with limited exceptions for "personal illness or other unavoidable excuses").

However, as we understand the facts before us, Claimant's mailing address did not change during the period December 19, 1977 through April 2, 1978. Carrier correctly maintains that she did not provide Rule 19 written notice of the ultimate new mailing address at 1410 Lake Street prior to April 12, 1978. Had Claimant still been properly in furlough status at that time then that dereliction would have been fatal to her seniority rights as of April 12, 1978. But we find persuasive the Organization's contention that but for the Superintendent's improper rejection of her April 6, 1978 bid she would not have still been in furlough status as of April 12, 1978.

Based upon all of the foregoing, we conclude that Claimant did not forfeit all seniority rights under Rule 19 and the Superintendent erred in so concluding. As remedy for this violation, Carrier must compensate Claimant for the losses in Part 2 of this claim. In addition, Carrier must reinstate Claimant with seniority date of September 25, 1976. However, this reinstatement is subject to the conditions agreed upon by Claimant, Carrier and the Organization in the settlement letter of December 19, 1977, supra.

FINDINGS:

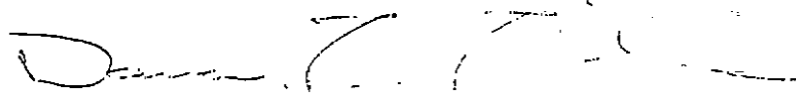
Public Law Board No. 2011, upon the whole record and all of the evidence, finds and holds as follows:

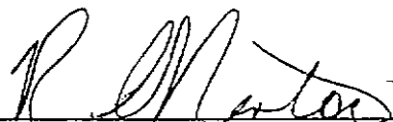
1. that the Carrier and Employee involved in this dispute are, respectively, Carrier and Employee within the meaning of the Railway Labor Act;
 2. that the Board has jurisdiction over the dispute involved herein;
- and
3. that the Agreement was violated.

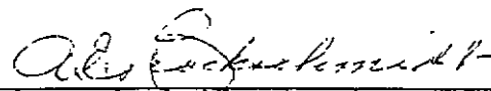
AWARD

Claim sustained to the extent indicated in the Opinion.

Carrier is directed to implement this Award within thirty
(30) days of issuance.


Dana E. Eischen, Chairman


R. O. Norton, Employee Member


A. E. Brockschmidt, Carrier Member
Dissenting

Date: 