

Award No. 1207
Docket No. 1159
2-TPMPT of NO-CM-'47

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121. RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (CARMEN)**

**TEXAS-PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD
OF NEW ORLEANS**

DISPUTE: CLAIM OF EMPLOYEES: 1—That the carrier violated the controlling agreement when Junior Coach Cleaner Joseph Simms was assigned to the position of coach cleaner on October 23, 1946, instead of restoring to the service, Senior Coach Cleaner M. R. Washington.

2—That in consideration of the aforesaid, the carrier be ordered to pay said Coach Cleaner M. R. Washington for all time she was rightfully entitled to work, effective October 23, 1946 to February 24, 1947.

EMPLOYEES' STATEMENT OF FACTS: M. R. Washington was employed as a coach cleaner by the Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans, on June 1, 1944, and she remained continuously in the service as such until furloughed with others in a force reduction about April 1, 1946. Subsequently, M. R. Washington was used at intervals to fill temporary vacancies of regularly assigned coach cleaners.

On October 18, 1946, the force was increased through the bulletining of temporary positions for two coach cleaners—one 6 days and one 7 days per week, copy of which is submitted and identified as Exhibit 1. Applicants for these positions were three furloughed coach cleaners, namely:

Alberta Byers—seniority date of May 28, 1944,
M. R. Washington—seniority date of June 1, 1944,
Joseph Simms—seniority date of September 12, 1946,

and their service standing is affirmed by copy of seniority roster of coach cleaners, identified as Exhibit 2. Of these applicants, Alberta Byers was assigned to the 6-day job, and Joseph Simms was arbitrarily assigned to the 7-day job, instead of M. R. Washington. However, the carrier did restore M. R. Washington to her rights on February 24, 1947, by virtue of furloughing Joseph Simms, and copies of these bulletins and application addressed to the general car foreman by Coach Cleaner Washington are submitted and identified as Exhibit 3.

The agreement effective April 1, 1943, as subsequently amended is controlling.

"As explained in conference, we cannot work women in Louisiana seven days a week in violation of the law. The law takes precedence over a rule; however, there is no rule that would support a claim such as presented when the party is not available to fill the position under the requirements of the law."

This woman claimant **was not available** under the State law to fill a 7-day, 56-hour per week, position.

At the time this 7-day job was put on to meet the requirements of the service, it was necessary to work same 7 days per week. We certainly would not have worked the position and paid for 7 days per week if 6 days would have met the requirements.

Immediately after business decreased to such an extent that we could get along with a 6-day assignment, we did this and allowed Woman Coach Cleaner Washington to resume duty on a 6-day assignment on date of February 24, 1947. This is evidenced by number of passenger cars cleaned at New Orleans, October 1946, compared with February and March, 1947, shown below:

October 1946	1242
February 1947	1175
March 1947	1072

While we cannot conceive of your Board sustaining this claim, would call attention to the fact that the claim as presented to your Board requests the carrier "to pay said Coach Cleaner M. R. Washington for all time she was rightfully entitled to work, effective October 23, 1946, to February 24, 1947".

By any stretch of imagination should such claim on the part of M. R. Washington be sustained, it should be for her net loss, if any, or the difference between what she would have made in our service and that which she did earn in any other compensated service during the period involved. Where settlement of claims were made for lost service involving shop craft employees, the method of deducting earnings made elsewhere has been followed, as was the case in the claim covered by your Board's Docket No. 3, Award 18. The claimant in that case having earned \$1700 in other service, that amount was deducted from the amount paid him as time lost. In this respect, also be referred to your Board's Awards 825 and 1180, ruling that any earnings in other employment would be deducted in arriving at time lost.

In the case at issue, however, we feel that the Board should not penalize the carrier or otherwise imply that the carrier would have been on good grounds in violating or evading a Louisiana State Law merely to meet the wishes of the claimant herein; and the carrier, therefore, respectfully requests that the claim be denied.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The record shows two jobs were up for bid—one a 7-day job, the other a 6-day job. The 6-day job was bid in and filled by a woman having greater seniority than Mrs. Washington.

The 7-day job was bid in by Mrs. Washington and Mr. Simms and given to Mr. Simms, one step down on the seniority roster from Mrs. Washington.

It must be held that Mrs. Washington could not fill the assignment of 7 days or more than 48 hours per week.

AWARD

1. No.
2. Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.