Award No. 2412
Docket No. 2223
2-AT&SF-BK-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Blacksmiths)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Coast Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Blacksmith Helper Teresa Rodarte was unjustly deprived of her seniority rights since March 29, 1955.

2. That accordingly the Carrier be ordered to place her in service and compensate her for all time lost retroactive to March 29, 1955.

EMPLOYES' STATEMENT OF FACTS: Mrs. Teresa Rodarte hereinafter referred to as the claimant was employed by the carrier at San Bernardino, California, as a blacksmith helper, May 20, 1943. Claimant remained constantly in the service until March 12, 1954, when she was furloughed reason given "reduction of expenses".

March 29, 1955, the carrier elected to increase the force of blacksmith helpers in their San Bernardino Shop.

Claimant was ready and willing to return to work, but was not notified by carrier to do so.

A junior employe to claimant was recalled to service by the carrier.

The agreement effective August 1, 1945, is controlling.

POSITION OF EMPLOYES: It is submitted that the claimant was an employe subject to all the benefits contained in the terms of the aforesaid agreement, although she has been deprived of all said benefits from March 29, 1955, to the present time.

It is submitted that the carrier violated the terms of the aforesaid agreement which reads:

Award No. 1883 involved blanking of positions on certain days and the question at issue was whether the carrier had violated the 40-hour week agreement. The Board held that the carrier had not violated the agreement and denied the claim. Clearly, there is no similarity either in facts or principle between Award No. 1883 and the instant case and the award does nothing to sustain this claim.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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.

Rule 24(d) provides in part as follows:

> "In restoration of forces, employes will be returned to the service in order of their seniority if available within fourteen (14) days, providing they are qualified to handle the work of the position to be filled. If not so qualified, the employe will stand by and the next furloughed employe will be called. * * *."

One element of claimant's qualification is an order of the California Industrial Welfare Commission, which prohibits female employes from lifting or carrying any object in excess of twenty-five (25) pounds except upon a permit from the Division.

Carrier shows that the position available, and filled by a junior employe on March 29, 1955, required handling hammer swages weighing thirty-two (32) to fifty (50) pounds, hammer flatters weighing thirty-four (34) pounds, draft gear keys weighing fifty-two (52) pounds and truck hangers weighing forty-five (45) pounds. Those facts are undisputed.

The rule does not require the carrier to revise positions to fit the qualifications of the employe but requires that the employe be qualified to handle the work of the position to be filled or stand by. It appears that positions for which claimant was qualified were filled by senior employes.

Under such circumstances the claim is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2412

The majority has found that an order of the California Industrial Welfare Commission prohibiting females from lifting or carrying objects in excess of twenty-five (25) pounds is authority for ignoring the provisions of the controlling agreement (Rule 24(d)) and disqualification of the claimant.

If a state law could be used to deprive the claimant of seniority rights dating from 1943, there is nothing in the record to support the implication

that the claimant would be required to **"lift or carry"** in excess of twenty-five (25) pounds.

The carrier and the majority rely on the words **"lift and carry"** in their citations but thereafter both the carrier and the majority stress that handling is the only action required. The majority chooses to disregard the fact that lifting and carrying of heavy materials is by the use of mechanical devices.

The Award is erroneous. We dissent.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
George Wright