Award No. 3541
Docket No. 3492
2-PE-F&O-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 159, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Firemen and Oilers)

PACIFIC ELECTRIC RAILWAY COMPANY

DISPUTE. CLAIM OF EMPLOYES:

1. That under the current Agreement, Mrs. Opal Shook, laborer at Watts Engine House, Los Angeles, California, was improperly furloughed out of seniority rank on January 31, 1958.

2. That accordingly the Carrier be ordered to compensate Mrs. Opal Shook at the pro rata rate of pay for all time lost, at eight (8) hours per day and five (5) days per week since January 31st, 1958 and until she is returned to her rightful position in accordance with her seniority rank.

EMPLOYES' STATEMENT OF FACTS: The Pacific Electric Railway Company, hereinafter referred to as the carrier, maintains at Los Angeles, California a repair shop know as Watts Engine House, wherein Laborer Opal Shook, hereinafter referred to as the claimant, was employed as a laborer with a seniority date of January 1, 1944. Claimant has been employed in several different positions with the carrier for 31½ years giving long and faithful service.

The Carrier abolished the claimant's position effective with the close of her shift on January 28, 1958. Upon being advised that her position as laborer at Watts was abolished effective January 28, 1958, the claimant under date of January 24, 1958 presented carrier's superintendent of equipment with a formal notice of displacement in accordance with the provisions of Rule 18 of the controlling agreement, copy of the notice is submitted herewith and identified as Exhibit A. On January 31, 1958, the carrier denied the claimant her contractual right to exercise her seniority giving as their reason that the work of the position requested required heavy lifting and that California State law prohibited the assignment of female employes to the performance of heavy work. Claimant was placed in furlough status as of January 31, 1958.

Under date of March 28, 1958, Local Chairman A. A. Boss filed a claim in writing with Foreman T. J. Clifford protesting the carrier's refusal to allow claimant to exercise her seniority and claiming compensation for all time lost. After waiting in excess of 60 days for a reply to his letter of March 28, 1958 and receiving none, the local chairman, under date of June 12, 1958, addressed a letter to Master Mechanic R. I. Mankins appealing the claim and requesting that the

Another of the duties required cleaning of men's room and adjacent facilities. It is certainly not socially proper that a female employe should be assigned duties in a facility of a private nature exclusively for the use of the opposite sex.

All of these things were taken into consideration with the conclusion that the claimant was not qualified within the comprehension of Rule 18.

FINDINGS: The Second Division of the Adjustment Board, based 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.

Parties to said dispute were given due notice of hearing thereon.

This presumption being that both parties are telling the truth, we find that carrier gave timely notices of disallowance of claim as required by the Time Limit Rule and that the local chairman failed to receive them, so neither is in default under the rule.

Claimant's position as laborer was abolished and under applicable rule she could place herself in such position as her seniority and her qualifications entitled her to. She was denied the right to displace a junior laborer on the ground that she was not qualified to perform the heavy lifting required in the position.

The duties included the cleaning of floors, walls and windows of the foreman's office, the trainmen's quarters, the men's rest room and the machine shop and engine house, and the picking up and handling of trash in the yard. It involved lifting and climbing on ladders and stools. Carrier states without denial that claimant was over 66 years of age, slight of stature and of physical capacity commensurate with her years; that she had a history of trouble with her back for many years, and in her former position had not been required to perform some of the duties of the position not in keeping with her physical ability.

We think carrier acted within the limits of proper discretion in holding that claimant was not qualified for the position sought.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 23rd day of September, 1960.