

Award No. 770
Docket No. CL-756

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Frank M. Swacker, Referee.

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood that:

"1. Miss Laura J. McCarthy be assigned to position ATS-21, rate \$5.57 per day, Auditor of Disbursements' Office, St. Paul, Minnesota, and compensated for monetary loss sustained as a result of refusal by the Management to assign her to the position for the period she was held off of this position since March 2nd, 1937.

"2. The arbitrary ruling by the Carrier that women employes in the Accounting Department will not be allowed to take positions which might require an occasional trip to the vault in the basement to refer to old records in connection with their duties is contrary to the seniority rules of the agreement."

EMPLOYES' STATEMENT OF FACTS: "Clerical position designated as ATS-21 became a permanent vacancy on February 20th, 1937. Miss Laura J. McCarthy, seniority date September 3rd, 1918, applied for, but was denied, the position. On March 2nd, 1937, a bulletin was posted in that office designating a permanent assignment to the position in question to Oxel E. Johnson, seniority date September 10th, 1919. Miss McCarthy immediately protested this assignment of a junior employe (see Exhibit No. 1) and was advised that her application was declined for the reason that during the course of the performance of the duties on this position it might be necessary for the incumbent to enter the basement and refer to certain old records on file in the vault. She was advised by the Auditor that there was a 'ruling' in effect in the Accounting Department that women employes should not be assigned to positions, the duties of which might require them to occasionally go to the basement to refer to records. No objection was raised as to her qualifications for the position. In fact she was told that she was well qualified to handle the work but was barred from the position because of the 'ruling' referred to above. (See Exhibits Nos. 2, 3, 4, 5, 6, 7, and 8.)

"The Representatives of the employes have never been shown or furnished with a copy of any instructions (if such instructions exist) which were supposed to have been put out to the Accounting Department some ten or twelve years ago to the effect that women employes were barred from certain accounting positions.

desire and effort to recognize and make allowances for those differences inherent in the sexes when they conflict with the actual circumstances of the work necessary to be performed."

OPINION OF BOARD: The question in this case arises over the refusal of the Carrier to grant promotion in accordance with seniority rules to a female employe to a position in the Accounting Department in the General Office Building of the Carrier. The position is one in the office of the Auditor of Disbursements which entails occasional trips to the basement, perhaps once a month, to examine old records stored in the vault there.

The Carrier seeks to justify on two grounds, (a) a "ruling" claimed to have been made by it to the effect that women employes would be considered ineligible to positions requiring visits to the vault, and (b) that under Rule 4 of Article 3 women are lacking in fitness for such positions.

The alleged ruling was never promulgated in any formal way, the date of its adoption is quite indefinite (except that it was subsequent to claimant's seniority date); but it is quite clear that that ground is untenable since no unilateral "ruling" could operate to limit the contract seniority rights of the agreement between the parties.

Denial on the grounds of lack of fitness, however—which the agreement contemplates—presents another question. Undoubtedly there are numerous positions under schedules applicable to both sexes, which by their inherent nature women are unfitted to fulfill, and the Carrier is, in such case, within its rights in disqualifying women for such positions under Rule 4 of the Agreement (claimant's ability is not questioned, but conceded).

The basis of the claim of the Carrier on this score is that the basement being, as it contends, rather secluded and dangerous, is an objectionable place for women employes to go to for these reasons, (a) it is invitative of immoral trysts, (b) women are in danger of being assaulted there, and (c) the records to be examined are bulky and so stowed as to be rather difficult of handling by women. The last ground seems rather to be make-weight and is not convincing since the same records of a more current period are regularly handled by the occupant of the position at her desk.

As to the first ground, the invitateness to trysts; the premise of this objection would need to be directed either to women office workers as a class, or to the particular applicant involved as an individual. The latter is most earnestly disavowed by the Carrier, and the Board will not assume a proneness of the class.

As to the second objection, that is the danger of assault; while this seems far-fetched, it must naturally be equally present so far as male employes are concerned for other purposes, such as robbery. If the condition in that respect is as grave as the Carrier purports to believe it to be, it is due to a lack of reasonable protection. Rule 65 expressly provides that working conditions for women shall be healthful, and fitted to their needs. Certainly a general office building where a woman employe is liable to attack through lack of ordinary protection presents a condition not "fitted to their needs."

It is the view of the Board that the Carrier has directed its inquiry concerning fitness at the wrong object, that is, at the employe rather than the building conditions of which it appears to be apprehensive, certainly the hazards suggested cannot be said to be an inherent quality of the position.

It follows that the refusal of promotion was unjustified.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 Carrier violated the seniority rules of the Agreement in rejecting claimant's bid for the position in question.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of December, 1938.