

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

**THE NEW YORK CENTRAL RAILROAD COMPANY
(BUFFALO AND EAST)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood on the New York Central Railroad Company (Buffalo and East):

(1) That in the Car Service Office at Buffalo, N. Y., Management violated the seniority provisions of our Agreement and especially Rules 4, 7, and 9 thereof, when it denied and refused assignment to senior bidders of positions bulletined for bids, viz.,

Name	Job No.	Title of Position	Rate Per Mo.
Florence E. Ott	502	Movement Clerk	\$170.60
Florence E. Ott	416	Per Diem & Adjusting Clerk	175.60
Leota Kirchner	202	Reclaim Clerk	195.60
Anna Hughes	415	Per Diem & Adjusting Clerk	180.60
Lillian E. Pruitt	502	Movement Clerk	170.60

(2) That these employees be assigned to the foregoing positions in accordance with Rule 9 and reimbursed in full for all wage loss sustained because of junior employees having been improperly assigned to the positions.

(3) That when these above named senior employees are properly assigned, the successful bidders for the vacancies thus created and the successful bidders for the vacancies which follow in consequence be compensated for the difference in the wages received and the wages they would have received if the rules agreement had been correctly applied initially and such employees not deprived of the opportunity for promotion.

EMPLOYEES' STATEMENT OF FACTS: Job 502 was bulletined for bids May 14, 1942. Florence E. Ott, seniority dating April 17, 1917, was denied and refused assignment to this position. Position was assigned to A. Neiger, seniority dating November 7, 1919. The improper assignment was formally protested and under date of June 16, 1942 Mr. E. S. Jackson, Superintendent Car Service, replied:

"In view of the class of work connected with this position and inasmuch as same has always been considered for male employees only, we did not assign Miss Ott to the position."

Job 416 was bulletined for bids May 28, 1942. Florence E. Ott, seniority dating April 17, 1917, was denied and refused assignment to this position. Position was assigned to L. Gayer, seniority dating December 1, 1918. The improper assignment was formally protested and under date of June 25, 1942 Mr. E. S. Jackson, Superintendent Car Service, replied:

"This is one of the positions in the departments which we have always considered as limited to male employees and assignment has been made accordingly. We cannot, therefore, reconsider the assignment."

Disregarding, insofar as this case is concerned, the other sections of said agreement, the facts that—

- (a) the \$40,000 was applied in wage rate increases effective April 1, 1930;
- (b) at the same time all female employees were removed from restricted departments as specified in Section 8, and
- (c) no female employee has been assigned to said departments since April 1, 1930.

proved beyond question that such an agreement was entered into, as otherwise these things could not have been done. Exhibit 3, affidavit of the Brotherhood's representative, who attended all the conferences which lead up to the agreement and subsequently participated in applying its terms, also proves that there was a bona fide agreement. It necessarily follows that, in prosecuting this claim, the Brotherhood's present representatives are repudiating said agreement.

Conclusions:

The carrier has shown:

- 1. that there was an agreement adopted in 1930, section 8 of which applies in this case;
- 2. that petitioner seeks to escape from the binding obligations of said section;
- 3. that the claim is in contravention of said section and should be denied.

OPINION OF BOARD: In this case the Carrier refused to recognize the seniority rights of certain employees as prescribed in Rule 9 of the current agreement effective September 1, 1922. It claims that it was justified in not doing so by reason of the provisions of an alleged oral agreement entered into April 1, 1930, which purported to restrict the positions to men.

This case is governed by the decision just filed in Docket CL-2147, Award 2140, and what has been said in that opinion is applicable here. As was there pointed out, the failure of employees to protest against violation of the rule, due to the application of the so-called "gentlemen's agreement" of April 1, 1930, did not constitute an implied amendment of the rule, and does not prevent them from seeking redress for violations by claims promptly filed and prosecuted after violations had taken place.

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 employees involved in this dispute are respectively carrier and employees 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 there was a violation of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of April, 1943.