

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) The Carrier violated the rules of the Clerks' Agreement with the Carrier when, on October 25, 1943, it dismissed from service without investigation, Mrs. Clara Anderson, employed in the office of Assistant Purchasing Agent at Portland, Oregon.

(b) Mrs. Clara Anderson be restored to service with seniority unimpaired, and compensated for net wage loss from October 25, 1943, to the date she returned to service.

OPINION OF BOARD: The Claimant employe, Mrs. Clara Anderson, was employed as Secretary to Assistant Purchasing Agent at Portland, Oregon, a position excepted from the Clerks' Agreement. On October 25, 1943, she was dismissed from service without an investigation for insubordination. She asks that she be returned to service with her seniority unimpaired.

It is not disputed that Claimant occupied an excepted position and that she could be discharged from that position, or otherwise disciplined, without resort to the current Clerks' Agreement. The question for decision is whether her seniority rights under the current Agreement can be destroyed without an investigation provided for in that Agreement.

Claimant had occupied several clerical positions under the Agreement for some twenty-five (25) years before she assumed the duties of an excepted position. The seniority thus attained was preserved when she accepted an exempt position by Rule 43(a). Her seniority rights attained by virtue of the current Agreement could be destroyed only in the manner therein provided. The Agreement provided that an employe who has been in service more than sixty days shall not be disciplined or dismissed without investigation. Rule 46, current Agreement. Clearly, therefore, the Claimant could lose her seniority rights under the Agreement only after an investigation held in accordance with Rules 46 to 52, inclusive. Award No. 2821.

At the end of the list of excepted positions contained in Addendum No. 1 appears the following:

"Seniority status of such employes and right to bid on new positions or vacancies is as established by provisions of Rules No. 33, 41 and 43 of the Agreement."

It was contended on behalf of the Carrier that in specifying these rules as being applicable to an excepted position that it has the effect of excluding all other rules. We think this contention is correct in so far as it applies to

the excepted position. The difficulty with Carrier's argument is that it overlooks the fact that the specified rules were intended to be made applicable to excepted positions and were not intended as a limitation upon the contract rights of the occupant of the excepted position at all. The rule as written is neither exclusive nor inclusive and consequently the rule of construction advanced by the Carrier can have no application.

We think that Claimant's right to exercise her seniority and displace a junior employe under the Clerks' Agreement has not been impaired by the proceedings recited in this record. Her dismissal from the excepted position could not have the effect of so doing unless investigation was held in accordance with the provisions of the contract under which they were acquired.

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 parties waived oral hearing hereon;

That the Carrier and the Employes involved in this dispute are respectively carrier and employes 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 current Agreement was violated as alleged.

AWARD

Claims (a) and (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of June, 1945.