

Award No. 3160

Docket No. CL-3156

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

PARTIES TO DISPUTE:

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

CHICAGO AND ILLINOIS MIDLAND RAILWAY COMPANY

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

(1) That the carrier violated the Clerk's Agreement when on October 3, 1944, it assigned Mr. L. C. Bramlet to a vacancy covered by Bulletin No. 1844, in the Engineering Department, Springfield, Illinois, and declined to consider the application of Mrs. T. W. Hickman, the senior employee.

(2) That the carrier violated the Clerks' Agreement by its repeated denial to Mrs. T. W. Hickman of her right of representation and hearing.

(3) That Mrs. T. W. Hickman be assigned to the position described in Bulletin No. 1844 and be compensated for all monetary loss sustained.

EMPLOYEES' STATEMENT OF FACTS: On September 29, 1944 Mr. E. M. Norris was designated as the successful bidder and assigned by Bulletin No. 1843 to the position of Utility Clerk in the Car Accountants Office, Springfield, Illinois. The vacancy thus created was bulletined September 29, 1944, No. 1844 (Exhibit "A"). The position was awarded October 3, 1944, Bulletin No. 1846 (Exhibit "B") to L. C. Bramlet whose Seniority date is February 28, 1942. The application of Mrs. T. W. Hickman with a Seniority date of January 22, 1942 was not given proper consideration.

On October 4, 1944 Mrs. T. W. Hickman requested reason for her non-assignment (Exhibit "C") as provided for Rule 17 of the Clerks' Agreement and was advised by the carrier October 5, 1944 (Exhibit "D") that she did not possess sufficient ability to handle the position. This decision was appealed and hearing requested October 9, 1944 (Exhibit "E") as provided for Rule 28 of the Clerks' Agreement. This appeal and hearing was denied by the carrier October 13, 1944 (Exhibit "F"). Further appeal was submitted October 20, 1944 (Exhibit "G") with no acknowledgment thereof from the management. Final appeal was submitted January 13, 1945 (Exhibit "H") and hearing refused by the carrier January 15, 1945 (Exhibit "I").

POSITION OF EMPLOYEES: There is in effect an agreement between the parties bearing effective date of February 1, 1938, revised effective March 1, 1945, from which the following rules are quoted:

Maintenance of Way Timekeeper. Company Bulletin No. 1844 (Exhibit No. 1 hereof) listed overtime work and road work as part of the duties of the position.

Illinois State Law entitled "An Act Concerning the Hours of Employment of Females in Certain Occupations" commonly known as "Women's Eight Hour Law," effective July 1, 1937, provides, among other things, no female shall be employed by any common carrier more than eight hours during any one day, nor more than forty-eight hours in any one week. Experience for years has shown that the duties of the Maintenance of Way Timekeeper are such that overtime work beyond eight hours in any day, as well as on some Sundays and holidays, from time to time is required because of peak periods of heavy work arising during a month at pay roll periods and because of special requirements. Submitted as Exhibit No. 9 is a statement showing the overtime hours, as just defined, worked by Mr. L. C. Bramlet since his assignment October 3, 1944, to the position of Maintenance of Way Timekeeper. It is the Company's position that Mrs. Hickman being a female employee, could not have met the overtime requirements of the position.

The bulletin requirement of road work for this position, the Company contends, disqualified Mrs. Hickman as an occupant of the position of Maintenance of Way Timekeeper. The occupant of this position must be ready at all times, on a moment's notice if necessary, to go out along the line for the purpose of checking up timekeeping matters with track labor gangs and other field forces of the Maintenance of Way Department. Submitted as Exhibit 10 is a photostat copy of a letter written August 22, 1945, by Mr. L. C. Bramlet, hereinbefore mentioned, outlining the extent and character of his duties with respect to trips out on the road required by the position of Maintenance of Way Timekeeper. Owing to the train service available for traveling on this line (out in the morning and back in the evening) many trips of themselves would require overtime. In addition to this, it is the Company's position that a female employee is unfit for such trips. The Company would not care to assume the risks involved in the dispatching of a female employee out on some of the trips, having in mind among other things, the personal injury risk involved therein.

Apart entirely from the matter of Mrs. Hickman's possession or lack of possession of sufficient fitness and ability, the Company requests that the Board disallow the claim of the Brotherhood on the grounds of improper procedure in the prosecution of the claim under the rules of the agreement between the Company and the Brotherhood. Submitted as Exhibit No. 11 is an excerpt from the agreement—Article IV, entitled "Discipline and Grievances." The Company contends that under Rule 34 Mrs. Hickman, within seven days of cause of complaint, should have filed her claim with her immediate superior. Since the position of Maintenance of Way Timekeeper is in the Chief Engineer's office, she should have filed her complaint, in the first instance, with the Departmental Supervisor in the Department in which the position was located. This, she did not do. Instead as above shown, she took up her complaint in the first instance directly with the Vice President, who was the designated highest authority on this line for grievances. It should here be explained that while all bulletins of assignment of employees to advertised positions are made over the name of the Vice President, this is because the Personnel Department is under the Vice President's direct supervision. The Company would point out that the fact bulletins are issued over the name of the Vice President has no modifying effect whatever on Rule 34 of the agreement between the Company and the Brotherhood,

OPINION OF BOARD: The claim and contentions of the parties involve three questions: First, the fitness and ability of the claimant for the position in question and her right to be assigned thereto; second, compliance with Rules 28 and 29 in Carrier's refusal to grant claimant her right of representation and hearing thereunder; and third, carrier's contention with respect to the application of Rule 34. We will deal with these questions in their reverse order.

Rule 34, by its clear language, deals with unjust treatment, **otherwise than covered by these rules**, and as this dispute is based upon asserted violations of rules, Rule 34 is inapplicable thereto. As to the second question, the carrier should have granted the claimant employe the right of representation and hearing under Rules 28 and 29 in accordance with the request of her representative on October 9, 1944. It is possible that had this provision of the agreement been complied with this dispute may have been adjusted on the property, in keeping with the provisions of the Railway Labor Act.

As to the first question, i.e., the fitness and ability of the claimant for the position sought; based upon the whole record, the Board is not disposed to disturb the action of the carrier in assigning the junior employe.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties in 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 item (1) and (3) of the claim will be denied and item (2) sustained in accordance with the Opinion.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois this 28th day of March, 1946.