

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith, Referee

PARTIES TO DISPUTE:

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

**UNION PACIFIC RAILROAD COMPANY
(Northwestern District)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

(1) The Carrier violated the Clerks' Agreement when on July 2nd, 1953, it failed to assign Greta McShain to a temporary position of Head Train and Enginemen Timekeeper in the Central Timekeeping Bureau, Portland, Oregon—

(2) The Carrier shall now be required to compensate Greta McShain for difference in what she earned as Train and Enginemen Timekeeper and what she would have earned as Head Train and Enginemen Timekeeper from July 6th to July 17th, 1953, both inclusive.

EMPLOYEES' STATEMENT OF FACTS: On July 1st, 1953, the Carrier posted a special Bulletin No. 10 which is provided for under Rule 12 (e) of the Clerks' Agreement, copy of this Bulletin is attached as Exhibit "A". On July 2nd, 1953, Greta McShain who held a regular assignment as Train and Enginemen Timekeeper, and had seniority date of November 6th, 1922, made the proper application for the position of Head Train and Enginemen Timekeeper.

On July 2nd, 1953, Leo E. White, who held regular assignment of Train and Enginemen Timekeeper (Vacation Clerk) and whose seniority date was August 30th, 1924, was assigned to the position, and on the same date Supervisor of Wage Schedules, Mr. Sather, wrote Greta McShain, advising her the reason she had not been assigned to the position, copy of letter attached as Exhibit "B". On July 3rd, 1953, Miss McShain replied to the Supervisor of Wage Schedules, copy of which is attached as Exhibit "C", and on July 7th, 1953, Division Chairman F. W. Madden, wrote the Supervisor of Wage Schedules, presenting claim for Miss McShain, copy of his letter is attached as Exhibit "D" and copy of Supervisor of Wage Schedules Sather's reply is attached as Exhibit "E".

Under date of July 28, 1953, Division Chairman Madden appealed to the Assistant General Chairman for further handling, and on August 7th,

All information and data contained in this Response to Notice of Ex Parte Submission is a matter of record or is known by the Organization.

The claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is here presented in behalf of one Greta McShain, regularly assigned Train and Engineman Timekeeper, for the difference in the rate of that position and the rate of the position of Head Train and Engineman Timekeeper between July 6 and 17, 1953, inclusive, account of allegedly having been denied opportunity of occupying temporary vacancy in said higher rated position.

The Organization takes the position that the Claimant as the senior employe making application to fill the temporary vacancy was entitled to fill same within the meaning of Rule 12 (a) and (e). It was pointed out that claimant's past experience as a Train and Engineman Timekeeper precludes a finding of lack of necessary ability to perform the duties in question and that her request obviously denied for reasons other than those permissible under the rules, namely because she was a female employe. It was further contended that Rule 8 of the Agreement, here relied upon by the Carrier is a general rule and as such cannot prevail as against Rule 12 (a) and (e) a Special rule.

The Respondent countered with the assertion that it quite properly considered the fitness and ability of claimant as was permissible under Rule 8, and in so doing, found that claimant was not possessed of the required fitness and ability to perform the duties, and was likewise not qualified physically or temperamentally to hold down the temporary vacancy. It was further pointed out that a portion of the work to be performed was located in an isolated building, said location being neither a safe nor a proper place for a female employe to work alone.

Rules 8, and 12 (a) and (e) relied upon by the parties provide:

"RULE 8. Promotion, Assignments and Displacements. Employes covered by these rules shall be in line for promotion. Promotion, assignments and displacements shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail, except, however, that this provision shall not apply to the positions listed in Rule 1 (e).

"NOTE: The word 'sufficient' is intended to establish more clearly the rights of the senior employe to a new position or vacancy where two or more employes have adequate fitness and ability.

"RULE 12. Temporary Assignments and Short Vacancies. (a) Bulletined positions may be filled temporarily pending an assignment as provided in section (e) of this rule and, in event bulletin fails to develop an application, the position may be filled by appointment except as provided in Rule 18.

"(e) New positions or vacancies not bulletined in accordance with this rule will be assigned to the senior qualified applicant in the office or station making written application within twenty-four hours from time vacancy is declared.

"When necessary to fill position or vacancy while under bulletin, senior qualified employe in the office or station making written application will be assigned pending assignment under bulletin, in which event the bulletin will constitute declaration of vacancy.

"When necessary to fill temporary vacancies or positions which are not bulletined, notice will be posted on bulletin boards in the office or station where vacancy occurs.

"Pending assignment of the senior qualified applicant as provided herein or in the event no applications are received, the vacancy may be filled by rearranging the force on the same shift in the office or station where vacancy exists. Vacancies not filled through rearrangement of the force may be filled in accordance with provisions of section (d) of Rule 18.

"Employees who work a second shift within a twenty-four hour period to fill a temporary vacancy before expiration of the twenty-four hour notice account no qualified extra or furloughed employee available, will be allowed time and one-half for the second shift worked.

"Employees assigned to temporary vacancies in accordance with this section (e) will not be subject to displacement except in case of reduction in regular force."

The record is clear that claimant was the senior employee who applied to fill the vacancy in question. Likewise her application was timely. She had held the position of Train and Enginemen Timekeeper for a number of years and was evidently acquainted with the work requirements of the higher rated position.

There is no noted exception contained in Rule 12 (e) that permits the assignment of any employee other than senior qualified employees making application for a vacancy within the specified time. There is no distinction contained in this or any other applicable rule between male and female employees.

We conclude that claimant's disqualification here was based primarily if not exclusively on the fact that claimant was a woman. This is evidenced by A. Sather's communication to claimant which reads as follows:

"Portland—July 2, 1953

"Miss Greta McShain:

A twenty-four hour notice was posted calling attention to the temporary vacancy on position of Head T&E Timekeeper and although you were the senior bidder have found it necessary to assign Mr. Leo White under the rule that provides for the assigning of the senior qualified bidder.

As you know, one of the requirements of the position of Head T&E Timekeeper is the filing and maintaining of records in the office and record room, both in this building, and in the old Marshall Street warehouse. Do not believe it would be proper to assign a woman employee to go to the Marshall Street warehouse, for example, and handle the heavy records there and be by herself in that isolated building for several hours. Further, it is necessary that the incumbent of this position be required to go to the basement warehouse in this building and bring up the heavy records.

Although the rules do not require that I notify you of the reasons that you were not assigned on the twenty-four hours notice, I wanted to explain to you why you were not given the assignment, as I believe you overlooked the handling of the heavy records here and in the Marshall Street warehouse.

A. Sather (Signed)"

as well as the subsequent denial by the Vice President during subsequent handling on the property.

It is noted that in neither instance was the question of claimant's basic qualifications raised. Likewise it is noted that claimant had, at other times, worked in this facility. The question of isolation of, and lack of heat in the facility had nothing to do with either claimant's ability or the application of Rule 12 (e) the controlling rule here.

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 the Carrier violated the effective agreement.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of April, 1957.