Award No. 14058
Docket No. CL-14852

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY — TEXAS AND LOUISIANA LINES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, (GL-5509), that:

(a) The Carrier violated the current Clerks' Agreement when on June 6, 1962, Carrier arbitrarily and capriciously refused to permit common laborer Miss Lula Sheffield to displace common laborer Joe Rand, her junior at the Purchasing-General Stores Department, Houston, Texas, solely because she was a female.

(b) Miss Lula Sheffield be paid a day's pay for June 6, 1962, at the appropriate rate of pay and for each succeeding day thereafter that she was deprived of work as a result of this violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: During and immediately following World War II the carrier employed a number of females as Common Laborers at its Houston General Stores in Houston, Texas. Among these female laborers was Miss Lula Sheffield who was employed on October 5, 1943. From this date until June 4, 1962, she bid in and was assigned to a number of Common or Storehouse Laborer positions. Likewise, she made a number of displacements on similar positions during the above period when in a displacing position due to force reduction with no question being raised as to her qualifications to perform laborer's work in the Store Department. As a result of force reduction in the laborer forces she was in a displacing position on June 4, 1962, and on that date made request to displace Common Laborer Joe Rand, her junior, effective June 6, 1962. Her request to exercise her seniority over a junior laborer in accordance with the rules was denied by Purchasing Agent T. E. Martin in his letter of June 5, 1962. On June 11, 1962, Miss Sheffield filed claim for a day's pay at the pro rata rate of Common Laborer for June 6, 7, 8 and 11 and each succeeding day thereafter when the carrier used Joe Rand to perform laborer's work. The claim

'An employee disciplined, or who considers himself unjustly treated, shall have a fair and impartial hearing, provided written request is presented to his immediate superior within five (5) days of the date of the advice of discipline, and the hearing shall be granted within five (5) days thereafter.'

"Under the application of the above rule, when claimant was relieved on July 5, 1956, he had the right to request an investigation to determine whether or not he was properly removed from the position or whether the action of the Carrier was arbitrary, but no request for an investigation has been made in this case. Therefore, we are forced to hold that in the absence of claimant complying with the plain wording of the rule there is nothing that this Board can do but to interpret the rules to mean that claimant here has failed to avail himself of the provisions of the rule."

CARRIER'S EXHIBIT NO. 3 reproduces this Award of Special Board of Adjustment No. 100.

CONCLUSION:

Carrier has shown that Miss Lula Sheffield was employed as common laborer in the Stores Department at Houston when it was impossible because of the War to employ men capable of performing all of the work of common laborer. Carrier has shown that she was given employment as long as there was a position available to her by reason of her seniority, the duties of which were light enough for her to perform. Carrier has shown that the decision to deny Miss Sheffield the right to displace on a job, all of the duties of which she was not capable of performing, was a proper one. Carrier asserts that when given an opportunity to try out on such a position, the claimant requested to be relieved as the duties were too heavy for a woman to perform. Carrier has shown that claimant and her representatives did not avail themselves of the opportunity under the Rules for a hearing but were content to rely upon seniority alone as a basis for the claim here presented. Carrier has shown that claimant has failed in her responsibility to present positive proof to support this claim.

Wherefore, premise considered, Carrier respectfully requests that the Board deny in all its particulars this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a companion case to Award No. 14055. It involves the same parties, Agreement, issue and measure of proof. For the reasons stated in that Award we will deny the instant claim.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of December 1965.

LABOR MEMBER'S DISSENT TO AWARD 14058, DOCKET CL-14852

This is a companion case to Award No. 14055, Docket CL-14821; it involves the same parties, Agreement, issue and measure of proof. For the reasons stated in my dissent to Award 14055, I register equal dissent to this Award 14058.

/s/ C. E. Kief
C. E. Kief,
Labor Member
1-19-66