



Award No. 18639
Docket No. CL-19058

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6853) that:

1. The Carrier violated the rules of the Agreement extant between the parties when it permitted and/or instructed 2 female employees at Stockton Round House to work in excess of the number of hours allowed per day under the California State Labor Code.

2. Mrs. Velma Prentiss, Stockton Round House Relief Clerk, shall now be allowed 8 hours pay at the punitive rate for September 11 and 18, 1969, October 11, 17, 22, and 31, 1969.

EMPLOYEES' STATEMENT OF FACTS: On September 11, 1969, Mrs. Velma Prentiss was the regular assigned Round House Relief Clerk No. 2 at Stockton, California. Her assigned schedule was:

Mon-Tues — 4 P.M. to 12 Mid.
Wed-Thur — 12 Mid. to 8 A.M.
Fri-Sat — Rest Days
Sunday — 8 A.M. to 4 P.M.

Mrs. G. S. Crawford was a furloughed clerk at this time and Mrs. E. L. Ferguson was regularly assigned to Round House Clerk 4 P.M. to 12 Mid. with rest days of Monday and Tuesday.

On the following days Mrs. Ferguson and Mrs. Crawford were used in excess of the Hours of Service Law for the State of California:

Date	Employee	Hours Worked
9-11-69	Ferguson	10:30 A.M. to 12 Mid.
9-18-69	Ferguson	8 A.M. to 12 Mid.
10-11-69	Ferguson	8 A.M. to 12 Mid.
10-17-69	Crawford	8 A.M. to 12 Mid.
10-22-69	Ferguson	8 A.M. to 12 Mid.
10-31-69	Crawford	12 Mid. to 4 P.M.

On the dates of the instant claim, two former Oroville Clerks (Mrs. Ferguson and Mrs. Crawford) set up the reporting and filing system relating to the Diesel locomotive repair work then being done at Stockton.

The instant claims were initially submitted by Claimant Velma G. Prentiss to the Chief Mechanical Officer on November 9 and 10, 1969 (Carrier's Exhibit "A" — 1 through 6) and were denied by the Chief Mechanical Officer in letters dated November 13, 1969. (Carrier's Exhibit "B" — 1 through 6). Attached as Carrier's Exhibits "C" and "D" are copies of the correspondence in connection with the progression of the instant claim on the property.

Copy of the controlling agreement between Carrier and the Brotherhood of Railway Clerks, effective December 16, 1943, Revised September 16, 1965, is on file with the Third Division, National Railroad Adjustment Board and is hereby incorporated herein by reference. Rule 29, 31(f) and 40(d) of said Agreement is quoted below for your Board's ready reference.

"Rule 29. Employees covered by these rules shall be in line for promotion, assignments, and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. When an employee junior to other applicants is assigned to a bulletined position, the senior employees making application will be advised the reason for their non-assignment if they request such information in writing and file it within 15 days from date of assignment.

NOTE: The word "sufficient" is intended more clearly to establish the right of the senior employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability."

"Rule 31(f). Employees will be selected to fill positions pending assignment by bulletin and all short vacancies in accordance with Rule 40(d) or Rule 29."

"Rule 40(d). Such employees, when available, shall be given preference on a seniority basis to all extra work, short vacancy (except as amended by Rule 20(h) and/or vacancies occasioned by the filling of positions pending assignment by bulletin. When a bulletined new position or vacancy is not filled by an employee in service senior to a furloughed employee on that roster who has protected his seniority as provided in this rule, the senior qualified furloughed employee will be called to fill the position. Furloughed employees failing to return to service within 7 days after being notified (by mail or telegram sent to last address given) or give satisfactory reason for not doing so, will be considered out of the service. Employees hired for the performance of extra work shall be considered as furloughed employees under this rule." (Exhibits Not Reproduced.)

OPINION OF BOARD: The Petitioner's basic contention is that Carrier was prohibited by the California Labor Code from working women employees more than 10 hours on any date and therefore Carrier violated Rule 9 which reads in part:

"... applicable laws enacted for the government of their (women employees) employment must be observed."

In response the Carrier contends that in Summary Judgment signed November 22, 1968, the United State District Court, Central District of California, Civil Action No. 67-1377-F, held that the California Labor Code limiting the number of hours women may work violated the 1964 Civil Rights Act, and, consequently, there being no limit on the number of hours a women may work, there could have been no violation of the California Labor Code or of Rule 9.

Based upon the Record, we find that the Petitioner has shown no contractual basis for the claim, and it will be denied.

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 the Agreement was not violated.

AWARD

Claimed denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1971.