

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21923
Docket Number CL-21738

John P. Mead, Referee

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
PARTIES TO DISPUTE: (
(Southern Pacific Transportation Company
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8159, that:

(a) The Southern Pacific Transportation Company violated the current Clerks' Agreement when it failed and refused to grant Barbara J. Bryant an investigation duly requested under the provisions of Rule 50 thereof; and,

(b) The Southern Pacific Transportation Company shall now be required to grant Barbara J. Bryant an investigation under the term of Rule 50 as requested.

OPINION OF BOARD: Carrier determined that only a portion of its forces would be required to work in its Data Processing Office on February 17, 1975, a legal holiday under the Clerks' Agreement. Claimant, who was scheduled to work her Position E-44, was required by Carrier as the only qualified available on-duty employee, over her objections, to perform service on Position 060 when the occupant thereon did not report for work. Five days after working Position 060 on the holiday, Claimant, alleging unjust treatment "on February 17, 1975, at which time carrier's agent arbitrarily and unfairly relieved me of my normal position and duties, without cause, merit or justification," requested an investigation under the provisions of Rule 50 which was initially denied on the basis that "actions complained of are covered by the provisions of NOTE 2 to Rule 25(d) of the current Clerks' Agreement." The claim was subsequently appealed through the various appeals levels provided by the agreement, with the Carrier insisting at each level that Claimant was not entitled to an unjust treatment hearing under the provisions of Rule 50 because, inter alia, the specific "grievance" was covered by other rules and unjust treatment hearings were for matters not covered by specific rules of the parties' agreement.

Rule 50 reads:

"An **employee** who considers himself unjustly treated, shall have the same right of investigation and appeal as provided in Rules 46, 48 and 49 if written request is made to his superior within fifteen (15) days of the cause of complaint."

This **rule** has been the subject of two decisions involving these same parties: Award 3 of PLB 843, and Award 21178 (**Blackwell**) of this Division wherein essentially the same arguments, addressed solely to the request for unjust treatment hearing without reference to other **agreement** violations, prevailed and, this situation not being distinguishable from that in Award 21178, that award is controlling. We do not find Award 21178, concluding the request for hearing under Rule 50 to have been improperly denied, to be in error and will sustain the 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;

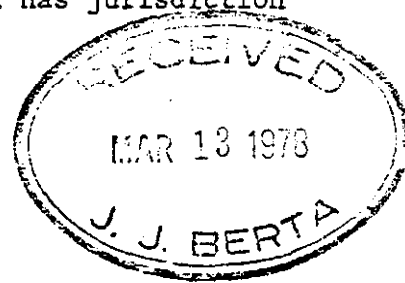
That the Carrier and the Employees involved in this dispute are **respectively** Carrier and Employees **within** the meaning of the **Railway Labor Act**, as approved June 21, 1934;

That this Division of the Adjustment Board **has jurisdiction** over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.



NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1978.