

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24225
Docket Number CL-23788

Robert E. Peterson, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, **Airline** and Steamship Clerks,
Freight Handlers, Express and Station **Employees**
(Northwestern Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-9296)
that:

(a) The Northwestern **Pacific** Railroad Company violated the current Clerks' **Agreement** when on September 29, 1975, and through November 14, 1975, the Guaranteed Extra Board at **Willits, California**, was being operated at 14.2%; furthermore,

(b) Notwithstanding the fact that the **Willits** Guaranteed Extra Board was being operated at less than the required 1% quota, and the fact that furloughed **employee**, Ms. **L. G. Brown** had advised Carrier **in** writing of her willingness to protect the extra board at **Willits**, the Company compounded its violation by showing Mrs. **Brown** as terminated as of October 2, 1975;

(c) The Northwestern Pacific Railroad Company shall now be required to allow an additional eight (8) hours pay at the pro rata rate of the Guaranteed Extra Board, for each date as follows': September 29, 30; October 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31; November 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28; December 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30, 31, 1975; January 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 16, 1976 and all subsequent dates as filed in supplemental claims.

(d) The Northwestern Pacific Railroad Company shall also be required to restore **Mrs. L. G. Brown** to service with all rights as though she had not been terminated.

OPINION OF BOARD: There are two issues of record in this dispute. One concerns the method for computing the number of extra board positions at a given location, the other, **whether** Claimant, Mrs. L. G. Brown, forfeited her seniority under Rule 41(f) of the applicable Agreement.

To resolve the dispute before us it is not necessary the Board make a determination on whether or not Carrier correctly computed the number of positions required to operate the Guaranteed Extra Board at **Willits, CA**. A dispute on that issue, whether real or imagined, cannot overcome the fact that at the **time** Claimant was recalled for service at Santa Rosa, CA, there was no available position open to her at **Willits**. The Carrier has the responsibility for **establishing** positions, and an individual **employee** cannot create a dispute on a real or imagined section of the Agreement and urge there is a position to go to in the exercise of seniority. Therefore, as it is undisputed that Claimant did

not timely comply with the Carrier's recall order to protect work at Santa Rosa, and Rule 41(f) is self-executing as concerns the forfeit-e of seniority and an **employment** relationship with the Carrier, this Board is compelled to deny Mrs. Brown's 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 **AdjustmentBoard** has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By *Rosemarie Brasch*
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of March 1983.

