

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Robert G. Corwin, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

DISPUTE.—

"Claim of Mrs. Jane Ward Smithe that she was illegally denied the opportunity to displace on position of M. P. & C. Clerk at Sparks, Salt Lake Division, and that she should be now assigned to the position and compensated for actual wage loss."

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

The carrier and the employee involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein. Reference is made to Award Nos. 322 and 323.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Robert G. Corwin was called in as Referee to sit with the Division as a member thereof. Upon request of the carrier, another hearing was held before the Third Division with the Referee sitting as a member.

Mrs. Jane Ward Smithe, the above-named claimant, was notified on September 28, 1931, that the position she had theretofore occupied was abolished as of the 30th of that month. Within the time fixed by Rule 41 of the Clerks' Agreement, within which she was included, she sought to displace a junior occupying the position of M. P. & C. Clerk. The duties of this position require that the occupant on occasions should visit various points on the road, in a somewhat desert and sparsely settled country, to take stenographic notes of investigations which might become necessary. Her request was denied by the management because of her fitness as a female to engage in such work. Upon protest, an investigation was instituted and, the decision of the officer of the management being upheld, the dispute was properly progressed to this Division. No question of bad faith on the part of the carrier is raised by the Committee, and on the contrary it appears that the former rather exerted itself to ameliorate the petitioner's misfortune.

The carrier never contended that Mrs. Smithe possessed insufficient ability to occupy the position she sought and the sole issue presented to us is whether it was justified in the position it took in regard to her fitness because of her sex to displace her junior. At and before the investigation she offered to assume all the embarrassment and other contingencies she might encounter. The carrier claims that it followed an unwritten rule not to engage a woman in a position of this kind. Was its decision an infraction of the rules?

Rule 41 above referred to affords an employee whose position is abolished the right to displace a junior. This provision, however, must be read in connection with Rule 28 which provides that displacements shall be based on seniority, fitness, and ability, fitness and ability being sufficient, seniority to prevail.

Manifestly it is within the province of the carrier in the first instance to determine whether the applicant possesses sufficient fitness to exercise the displacement. Awards of this and other divisions have held that its judgment must be free from arbitrary and partial motives. If its action is dictated by

proper considerations, the individual ideas of the members of the Division cannot be substituted for the conclusions it has reached.

Assuming, as we must, that both the management and Mrs. Smithe's representatives acted altogether in good faith, we can only reach the conclusion that the question of her fitness was one upon which reasonable minds might differ. And such being so, it must follow that the prerogative which the carrier has reserved has not been abused. In reaching a decision it is hardly competent to examine the actual experience of those who later performed the duties of the position. Former awards, notably those involving one-armed and short-legged men, willing to assume all risks, have indicated that it is only what might occur that matters.

Under all the circumstances we are unable to find that the carrier has been guilty of any infractions of the rules.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 19th day of October, 1936.