

Award No. 771
Docket No. CL-757

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES.**

GREAT NORTHERN RAILWAY COMPANY.

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood that:

"1. Miss Laura J. McCarthy be assigned to position AD-91, rate \$6.57 per day, Auditor of Disbursements' Office, St. Paul, Minnesota, and compensated for monetary loss sustained as a result of refusal by the Management to assign her to the position for the period she was held off of this position since November 16th, 1937.

"2. The arbitrary ruling by the Carrier that women employees in the Accounting Department will not be allowed to take positions which might require an occasional trip to the vault in the basement to refer to old records in connection with their duties is contrary to the seniority rules of the agreement."

STATEMENT OF FACTS AND CONTENTIONS: The facts and contentions in this case are the same as those in the preceding Award No. 770 Docket CL-756, with the exception that in this case the claimant subsequently bid on another position which was also denied to her, but the Carrier claims in this case that she was not the senior employee entitled, another woman senior to her having bid, whose bid was also rejected on the same ground. The Organization contends that no consideration should be given to any bid by any other employee since it alone was empowered to handle any grievance in the matter, and not having done so the contention should be ignored.

OPINION OF BOARD: As indicated by the Opinion in the foregoing Award 770, the Carrier was not justified in rejecting claimant's application on the ground of her sex.

So far as the Organization's claim is concerned that it alone is empowered to prosecute any grievance on behalf of the affected employee, this position is quite untenable. The other applicant, of course, could have, had she seen fit, prosecuted her claim herself or through any representative of her choosing other than the Organization.

The Carrier, however, fails to show that when the senior applicant's bid was rejected that she took any appeal, which under Article 4 Rule 29 (b) she was required to do within twenty days. In such circumstances she must be deemed to have abandoned her claim on the expiration of that period, and in that case the right automatically inured to the claimant in this case.

The claimant therefore is entitled to wage loss sustained beginning twenty days subsequent to the assignment of the male employe to the vacancy involved.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds;

That the carrier and the employe involved in this dispute are respectively carrier and employe 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

Carrier violated seniority rules of the Agreement, as indicated by Opinion.

AWARD

Claim 1 sustained to the extent indicated by the Opinion.

Claim 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1938.