

Award No. 1369
Docket No. CL-1525

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood of Railway Clerks that Miss Olive Haefele, Clerk Auditor Freight Accounts Office, Ravenswood, Illinois, now be assigned to position of General Clerk No. 271-6, rate \$6.45 per day and be reimbursed for all monetary losses suffered retroactive to April 2, 1938 account violation of Rule 18 Current Clerks' Agreement."

EMPLOYEES' STATEMENT OF FACTS: "The instant case is an outgrowth of a previous claim that had been filed with the 3rd Division, National Railroad Adjustment Board, Award 1008, Docket No. CL-1008. Hearing was held and concluded. Under date of November 21, 1939, the parties jointly advised the Secretary of the Third Division of their desire to withdraw same from further consideration by the Division, which request was granted.

"The following understanding was reached in conference November 21, 1939 and confirmed by Mr. Pangle, Director of Personnel, in his letter of November 25, 1939.

'In accordance with understanding reached in conference November 21, 1939, we will dispose of the above case on basis of allowing Miss Haefele an opportunity to demonstrate whether she has the necessary fitness and ability to perform the duties required of position 271-6. This with the understanding that if she qualifies within the time specified in rule 18, clerks' agreement, she will be compensated wage loss sustained as a result of not having been assigned thereto as of or about April 2, 1938.'

"In accordance with the above understanding Miss Haefele was assigned to position 271-6 on December 1, 1939. Under date of December 14, 1939 the following communication was addressed to Mr. H. C. Busk, Auditor Freight Accounts.

'Since having been assigned on December 1, 1939, to position 271-6 in the statistical department, rated at \$6.45 a day, following understanding reached between Mr. M. E. Pangle, Director of Personnel and Mr. Leo Seifert, General Chairman, of the clerks organization in disposing of my complaint presented to you under date of April 11, 1938, there is definitely in my opinion, evidence to impair my opportunity to qualify on this position on the part of supervisory forces and that the course of conduct directed towards me is designed to discredit my ability and in violation of rule 18 of clerks agreement.

whether this very important statement will be ready for transmittal to the Interstate Commerce Commission by Wednesday or even Thursday.

'We are subject to severe criticism by the Commission for any delay in transmitting this class of information and while it is our intention to give Miss Haeefele sufficient time to demonstrate her ability, I wish to direct your attention to the delay we have so far experienced in her first assignment on a position which she professed to have complete knowledge of the work. Furthermore, the delay in completing this statement will obviously defer other important work. An additional statement "Condensed Commodity Statement," covering the month of October and cumulative period, which is furnished the officers of this Company, including Mr. Williams, Mr. Westbrook, Traffic Officials, etc. is due on December 5th (today) and only recently we were asked not to fail in rendering this report on the required date as it furnishes vital information to those who receive copies. Also, at this time of the year we are preparing to close the twelve months figures, our annual reports to the Interstate Commerce Commission, various State Commissions, etc., and it is essential that the incumbent on this position be fully conversant with the work, as in addition to compiling these reports she is expected to instruct other clerks in the department as well as answer inquiries concerning procedure in compiling this data.

'I might also state that the supervisor in this department has been giving Miss Haeefele all the possible attention, even to the extent of deferring his vacation for which all arrangements had been made to leave on Saturday, December 2nd.

'The above for your information.'

"It is the position of the railway company that—

- "1. At or about the time vacancy on position 271-6 was bulletined, April 2, 1938, at which time Miss Haeefele was the senior applicant therefore she did not possess the necessary fitness and ability to perform the duties of position No. 271, and, therefore, was not entitled, under provisions of rule 16, clerks' agreement, to assignment thereto solely on basis of seniority.
- "2. Subsequent to assignment of Miss Haeefele to position No. 271, December 1, 1939, she demonstrated conclusively that she did not have the necessary fitness and ability to perform the duties assigned to the position, and it was entirely proper to have removed her therefrom on basis of her not being qualified therefor.
- "3. Claim of the employes as submitted to the Board that Miss Haeefele be now assigned to position of general clerk, No. 271, and compensated for any monetary loss suffered by her retroactive to April 2, 1938 is not supported by rules applicable nor by facts of evidence supporting any contention that Miss Haeefele had the necessary fitness and ability to perform the duties required of position No. 271 and, therefore, was entitled to assignment thereto on basis of seniority."

OPINION OF BOARD: Based solely on the facts and circumstances of this case, including the understanding reached by the parties on November 21, 1939, and confirmed by Mr. Pangle's letter of November 25, 1939, relative to allowing claimant to demonstrate her fitness and ability to perform the duties of Position 271-6 and including also report of hearing accorded claimant, December 28, 1939 to January 10, 1940, following her removal from that position, the Board holds that the claimant should now be placed on Position 271-6 and allowed thirty days in which to qualify in accordance with Rule 18, reading:

"Failure to Qualify: Employees awarded bulletined positions will be furnished all necessary instructions and assistance, with a view to educating and qualifying them to perform work required thereon, and will be allowed thirty (30) days in which to qualify, when it will not interfere with efficient or economical operation or cause undue impairment of the service. * * *."

If claimant qualifies for the position within the thirty day period, she should be compensated for wage loss sustained retroactive to April 2, 1938. This is in accord with the understanding reached by the parties November 21, 1939 and confirmed by Mr. Pangle's letter of November 25, 1939.

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 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; and

That the claim is sustained to the extent shown in the Opinion.

AWARD

Claim sustained to extent shown in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1941.