Award No. 2433
Docket No. CL-2416

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

GULF COAST LINES, INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY, SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY, SUGARLAND RAILWAY COMPANY, ASHERTON & GULF RAILWAY COMPANY

(Guy A. Thompson, Trustee)

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

(a) The Carrier violated the Clerks' Agreement on January 20, 1943, when it denied Miss Hazel Gerner the right to work overtime in the performance of work regularly assigned to and performed by her. Also

(b) Claim that Miss Gerner be paid three and one-half hours overtime because of the agreement violation.

EMPLOYES' STATEMENT OF FACTS: Miss Gerner is employed as Bookkeeper in the Auditor's Office at Houston.

On January 20, 1943, certain work in the Auditor's office regularly assigned to and performed by Miss Gerner, had to be completed by working overtime.

Miss Gerner worked one hour's overtime, at the end of which she was required to suspend work. The remainder of Miss Gerner's work, three and one-half hours, was completed by other employes.

The Carrier has never questioned the fact that the work should have been, under the agreement, performed by Miss Gerner. (See Exhibits A, B, C, and D.)

POSITION OF EMPLOYES: The facts, circumstances and rules involved in this case are identical with those involved in the following claim which has been submitted to your Honorable Board:

> "Claim of the System Committee of the Brotherhood that:
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> "(a) The Carrier violated the Clerks' Agreement on January 20, 1943, when it denied Mrs. Pauline B. Cobb the right to work overtime in the performance of work regularly assigned to and performed by her. Also
>
> "(b) Claim that Mrs. Cobb be paid four (4) hours overtime because of the agreement violation."

"In working overtime before or after assigned hours, employes regularly assigned to class of work for which overtime is necessary shall be given preference; the same principle shall apply in working extra time on Sundays and holidays."

Under the above quoted rule Miss Gerner was permitted to work one hour overtime on January 20, 1943 and at 6:00 P. M. on that date, having worked nine hours, was relieved of further service by reason of the fact that the Carrier is prohibited under the Texas State Law to require her to work in excess of nine hours on any calendar day, which law is applicable to women employes according to the opinion rendered by the Attorney General's office of the State of Texas approved by him personally, October 2, 1942. (See Carrier's Exhibit No. 1.)

In the instant case, Miss Gerner was given preference to work overtime after her assigned hours as is provided for in Section B, Article 45 of the current Agreement with the Clerks' Organization and worked the full amount of overtime which the Carrier could permit her to work and comply with the Texas State law governing the hours of service of female employes.

Based on the facts and evidence herein submitted, Carrier respectfully requests your Honorable Board to deny the claim of the employes.

OPINION OF BOARD: The record discloses that Hazel Gerner was employed as a Bookkeeper in the Auditor's Office at Houston, Texas. On January 20, 1943, she was entitled under the terms of Rule 45 (b) of the current agreement to work overtime for 4½ hours. She was permitted to work one hour in addition to her regular eight hour assignment and thereupon ordered by the Carrier to cease work because of a Texas statute prohibiting women from being worked more than nine hours in any twenty-four hour period.

It must be conceded as a principle of law, long determined by the highest judicial authority that Congress, under its power to regulate commerce between the states, has authority within the limits prescribed by the Constitution to regulate the wages, hours and basic working conditions of all employes of carriers engaged in interstate commerce, even though some of the employes may be locally stationed and their work only indirectly and remotely connected with the actual movement of trains in interstate commerce. Virginian Railway Co., v. System Federation No. 40, 300 U. S. 515.

On the other hand, it is just as clearly settled that a state, through legislative action in the exercise of its police power, has authority to regulate the hours of labor of women and minors for the purpose of protecting their health and safety even though such legislation may affect interstate commerce. Muller v. Oregon, 208 U. S. 412.

Likewise, it may be conceded as established beyond question that when Congress has enacted legislation regulating wages, hours of labor and working conditions generally of employes of carriers engaged in interstate commerce, such legislation supersedes all state legislation in conflict with it and the regulating power of the state ceases to exist within the field thus occupied by the Federal authority. Erie Railroad Co. v. People, 233 U. S. 671.

Neither is it disputed that the claimant in the present case is an employe within the meaning of the Railway Labor Act and as such entitled to all the benefits of that Act. It is also agreed that the claimant was not an employe "actually engaged in or connected with the movement of any train" and consequently not within the Federal Hours of Service Act, approved March 4, 1907.

After a recapitulation of these fixed principles, the primary question remaining for determination is whether the Federal Congress, by enacting the Railway Labor Act, entered the field of fixing maximum hours of labor for women engaged in interstate commerce. If it did, the Texas Statute has been superseded; if it did not, the Texas Statute controls the result.

The question posed is purely a legal one in which the decisions of the Supreme Court of the United States control the result to the extent that it has spoken. The controlling decision of that Court is, in our judgment, the case of Terminal Railroad Association v. Brotherhood of Railroad Trainmen, 63 Sup. Ct. Rep. 420, decided on January 18, 1943. The opinion in that case states:

"The Railway Labor Act, also relied upon by appellant, remains for consideration and presents questions of a different order, not heretofore examined in any opinion of this Court. The purpose of this Act is declared to be to provide 'for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions'; and 'for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.' It places upon carriers and employes the duty of exerting every reasonable effort to settle these disputes by agreement, and prohibits the carrier from altering agreed rates of pay, rules or working conditions except in the manner provided by the agreement or by the Act itself. Machinery is set up for the adjustment, mediation, and arbitration of disputes which the parties do not succeed in settling among themselves. . . .

". . . . The question is whether the Railway Labor Act, so interpreted, occupied the field to the exclusion of the state action under review. We conclude that it does not, and for the following reasons:

"The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulation of wages, hours or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working condition as such. So far as the Act itself is concerned these conditions may be as bad as the employes will tolerate or be made as good as they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions. The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce. The Mediation Board and Adjustment Board act to compose differences that threaten continuity of work, not to remove conditions that threaten the health or safety of workers. Cf. Pennsylvania R. R. v. Labor Board, 261 U. S. 72, 84.

"State laws have long regulated a great variety of conditions in transportation and industry, such as sanitary facilities and conditions, safety devices and protections, purity of water supply, fire protection, and innumerable others. Any of these matters might, we suppose, be the subject of a demand by workmen for better protection and upon refusal might be the subject of a labor dispute which would have such effect on interstate commerce that federal agencies might be invoked to deal with some phase of it. But we would hardly be expected to hold that the price of the federal effort to protect the peace and continuity of commerce has been to strike down state sanitary codes, health regulations, factory inspections, and safety provisions for industry and transportation. We suppose employes might consider that state or municipal requirements of fire escapes, fire doors, and fire protection were inadequate and make them the subject of a dispute, at least some phases of which would be of federal concern. But it cannot be that the minimum requirements laid down by state authority are all set aside. We hold that the enactment by Congress of the Railway Labor Act was not a preemption of the field of regulating working conditions themselves and did not preclude the State of Illinois from making the order in question."

The import of this decision is that the Railway Labor Act provides for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions and for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions, **and that it does not undertake governmental regulation of wages, hours, or working conditions.** There is no place in the Railway Labor Act where it can be ascertained what the maximum hours of service for women are. The law is silent in this respect and consequently we cannot say that Congress has entered this field by the enactment of the Railway Labor Act.

It is urged that collective agreements have such a standing that the purpose of the Railway Labor Act would be seriously impinged if state laws in any way interfering with the general purpose of the Act were permitted to have effect. We do not think there is merit in this argument. In the first place, the railroads have always been compelled to comply with valid state regulations arising out of the police power of the state. And in the second place, if such action on the part of a state constituted an unreasonable interference with interstate commerce, Congress by the simple expedient of occupying the field by the passage of an Act consonant with its ideas of reasonableness could supersede the state action.

There is a further reason why the position of claimant is not legally sound. It is urged that as Congress authorized and encouraged the negotiation of collective agreements that such agreements when negotiated are superior to valid state laws enacted pursuant to the police power of the state. In other words, the argument is that while the Railway Labor Act did not specifically fix maximum hours of labor for women, it delegated that power to the parties negotiating the collective agreement. This is, of course, fundamentally erroneous. In the first place, Congress had no intention of so doing, as was held in Terminal Railroad Association v. Brotherhood of Railroad Trainmen, supra, and in the second place, the Congress lacks the constitutional authority to delegate legislative power to private persons, the exercise of which power would nullify valid state laws arising out of the police power of the state. While Congress has the power to pre-empt the field of fixing maximum hours of labor for women within the field of interstate commerce, the fact that it has done so must definitely appear by the terms of the Congressional Act itself. Reid v. Colorado, 187 U. S. 137; Savage v. Jones, 225 U. S. 501. The collective agreements negotiated by the parties pursuant to the provisions of the Railway Labor Act are unimportant in determining whether Congress has pre-empted the field and thereby rendered a conflicting state law nugatory.

We have carefully examined this Division's Awards Nos. 707 and 2273, both of which arrive at a conclusion directly contrary to our present holding. Of course, the decision in Terminal Railroad Association v. Brotherhood of Railroad Trainmen, supra, had not been decided when Referee Spencer prepared Award No. 707, and it does not appear that Referee Swaim had the benefit of the reasoning and holding of that case when he prepared Award No. 2273. In any event, the decision in Terminal Railroad Association v. Brotherhood of Railroad Trainmen, supra, is directly in point and is such an authority that it cannot be ignored, irrespective of past holdings or future effects.

The situation presented is a delicate one for several reasons; the necessity for passing upon a question of constitutional power, the necessity for overruling two previous awards of this Division which were prepared by two able and scholarly referees, and the necessity for departing from that consistency of decision which is ordinarily essential in avoiding economic confusion. A careful analysis, however, leads to but one conclusion,—the result is controlled by the state law of Texas regulating the hours of labor of women and not by the literal wording of the collective agreement made pursuant to the provisions of the Railway Labor Act.

We consequently are obliged to overrule Awards 707 and 2273 and adhere to the result herein announced as the correct interpretation of the legal point involved in view of the controlling decisions of the Supreme Court of the United States.

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 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 Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the current agreement in giving effect to a Texas statute prohibiting women from being worked more than nine hours in any twenty-four hour period.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of December, 1943.