

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

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**PARTIES TO DISPUTE:**

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

**THE NEW YORK CENTRAL RAILROAD COMPANY  
(LINE EAST)**

**STATEMENT OF CLAIM:** Claim of System Committee of the Brotherhood on the New York Central Railroad Company, Buffalo and East:

1. That Management violated Rule 19 and the seniority provisions of the Agreement in refusing to permit Mrs. Blanche E. Sweeney to take the position of Miss Grace A. Caher, Assistant Chief Telephone Operator and a junior employe, through exercise of displacement rights when Mrs. Sweeney's position of regular Relief Telephone Operator was abolished, September 1, 1949 as a condition for converting to the Forty-Hour Week.

2. That Mrs. Blanche E. Sweeney now be assigned to the position of Assistant Chief Telephone Operator and granted the retroactive adjustment in pay to September 1, 1949 which is required to reimburse her for all wage loss suffered account of this continuing violation of the Agreement.

**JOINT STATEMENT OF FACTS:** On July 1, 1949 the parties consummated a Memorandum of Agreement establishing a 40-hour week to become effective September 1, 1949. A copy of the foregoing Memorandum of Agreement is on file with this Division, as well as the rules agreement between the parties effective September 1, 1922, revised April 1, 1923 and on various other dates.

Prior to the inauguration of the 40-hour week on September 1, 1949, and in conformity with a "Procedure to be followed in preparing rest day schedules and relief assignments to be effective September 1, 1949" filed herewith as Joint Exhibit A, advance notice was posted by the Carrier abolishing all regular relief positions in the Telephone Switchboard Room at Buffalo.

Mrs. Blanche E. Sweeney, who first entered the service of the Carrier on May 1, 1913, was employed as relief telephone operator in that office when the said notice was posted. Having been so notified that her position was to be abolished effective September 1, 1949, she filed request on August 15, 1949 with the Manager, H. C. Quentin, to displace Miss Grace Caher, who first entered the service of the Carrier on January 24, 1915, and on August 15, 1949 held the position of Assistant Chief Telephone Operator. This request was denied on August 29, 1949 by Manager Quentin in letter to Mrs. Sweeney. The latter thereupon bid in regular relief position No. 27 on September 2, 1949.

Many decisions of this Division support the foregoing principles. For just a few of the more recent ones, see Awards Nos. 2350, 2692, 3057, 3151, 3273 and 3573.

Another principle, almost equally well recognized, is, that once fitness and ability of an employe have been found by the Carrier to be wanting the burden of overcoming that decision by substantial and competent proof rests upon the employe (Awards 2031, 2491, 3273)."

The facts and circumstances here involved are in no material respect different from those presented to the Third Division in that case. In addition, the principle expounded in the last paragraph quoted above places the burden of proving qualifications on the employe when the Carrier has found fitness and ability to be wanting. Neither Mrs. Sweeney nor the organization has at any time since this dispute arose made any attempt to prove to the Carrier she possessed the necessary qualifications to handle the position of Assistant Chief Operator. Their attitude has been that she has the unrestricted right to that position by reason of seniority. Carrier, therefore, requests that award in this case should be in conformity with decision in Award No. 4040.

All facts and arguments herein presented have been made known to the employes.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Regardless of conflicting contentions and statements of the parties as to the cause of the controversy or the application of rules, the Carrier indicated a willingness to make settlement on the following basis:

1. Pay Mrs. Sweeney incumbent rate equal to Assistant Chief Telephone Operator.
2. Maintain this rate on same level as Assistant Chief Telephone Operator rate during remainder of Mrs. Sweeney's service.
3. Effective date September 1, 1949.

However, the Carrier stated it was unwilling to upset the efficiency of the switchboard office by assigning Mrs. Sweeney to the Assistant Chief Telephone Operator position, experience in the past having demonstrated her lack of qualifications to perform the supervisory duties.

Based on the facts and circumstances of this case, the Carrier's offer, which is still open, was a fair and reasonable settlement of the dispute. The claim should be disposed of accordingly.

**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 claim shall be disposed of in accordance with the Opinion.

AWARD

Claim disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 17th day of September, 1951.