

Award No. 11811
Docket No. CL-11637

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

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

(a) Carrier violated the Clerks' Agreement between the parties effective October 1, 1940, as amended, when it arbitrarily disqualified Geneva G. Laster from Revising Clerk Position No. 12, Phoenix, Arizona, effective July 5, 1957; and,

(b) Geneva G. Laster shall now be restored to Revising Clerk Position No. 12 and compensated an additional day's pay at the rate thereof July 5, 1957, and each date thereafter until restored thereto.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, between the Southern Pacific Company (Pacific Lines), hereinafter referred to as "Carrier", and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Employees), which Agreement hereinafter referred to as the "Agreement", is on file with this Board and by reference thereto is hereby made a part of this dispute.

On June 15, 1957, Mrs. Geneva G. Laster, hereinafter referred to as the "Claimant", displaced junior employe H. Dupree who was the regular assigned occupant of Revising Clerk Position No. 12, Phoenix, Arizona, assigned hours 5:00 P. M., to 1:00 A. M., rest days Tuesday and Wednesday.

On July 1, 1957, Claimant's supervisor, Mr. J. L. Burton, Agent, telephoned the Employees' Local Chairman at Phoenix, Mr. W. J. McAllister, and asked him to come to his office for the purpose of discussing the Claimant's qualifications for Position No. 12, with the thought she could be persuaded to relinquish the position. Mr. Burton did not set a date for the conference or in any way what-

tion No. 12 during a seasonal peak cannot excuse her failure to fulfill the duties of the position. It is apparent that claimant had worked in the freight office a sufficient length of time to be aware of seasonal peaks and if in the manner necessary to properly serve the carrier's patrons she could not handle the positions she should not have displaced into the position at that time. Rule 28, it is noted, says nothing whatever about "seasonal peaks".

With further reference to General Chairman's contention that claimant was not given "reasonable opportunity to demonstrate her fitness and ability", the record shows that she occupied Position No. 12 for 18 days. Certainly that many days on a position can be considered a "reasonable" amount of time, particularly in view of the nature of the position involving work which obviously had to be handled on current basis, and fact that she had presumably, as reflected by the record, spent some time (on her own time) in learning the duties of the position. Carrier submits that where an error of the magnitude of that involving the mishandling of 4 cars of ice occurred on the 15th day claimant occupied the involved position, certainly it was not unreasonable to conclude that claimant was not qualified properly to perform the duties of that position.

It will be noted that the penalty claimed in paragraph (b) of the Statement Of Claim is "an additional day's pay at the rate thereof July 5, 1957, and each date thereafter until restored thereto"; that penalty is entirely without basis. Even if the claim had merit (and Carrier denies that it has) the only compensation due claimant would be the difference in the earnings made by claimant and compensation she would have made had she worked the involved position for as long as she properly held title to it.

CONCLUSION

The claim in this docket is entirely lacking in either merit or agreement support and Carrier requests that it be denied.

All data herein submitted have been presented to the duly authorized representatives of the employees and are made a part of the particular question in dispute.

The Carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the Carrier at this time and have not been answered in this, the Carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue is whether Carrier's disqualification of Geneva G. Laster from Revising Clerk Position No. 12, Phoenix, Arizona, was arbitrary. We have considered the particular facts and circumstances pertinent to this claim, at the time and place involved, as shown by the record. The Employees have not sustained the burden of proving a violation of the Agreement.

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

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1963.