

Award No. 12843
Docket No. CL-12669

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Ables, 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 (GL-4926) that:

(a) Carrier violated the Agreement between the parties effective October 1, 1940, as amended, when it arbitrarily disqualified Mrs. P. W. Gilzean from MofW Clerk Position No. 119 effective April 11, 1960; and,

(b) Carrier shall now be required to restore Mrs. P. W. Gilzean to MofW Clerk Position No. 119 and compensate her an additional day's pay at the rate thereof April 12, 1960 (including holiday allowances), and each day thereafter until she is restored thereto.

EMPLOYEES' 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.

Mrs. P. W. Gilzean, hereinafter referred to as "Claimant", entered the service of Carrier on September 9, 1943.

On January 11, 1960, Claimant was displaced from position of Roadmaster's Clerk, Dunsmuir, Roster No. 1, Shasta Division. Thereupon, she filed displacement against junior employe Gina George, who was occupying MofW Clerk Position No. 119. She broke in on Position No. 119 from January 12, 1960, to and including February 10, 1960, a total of twenty-two work days, and took the position over on February 11, 1960.

On April 8, 1960, Mr. S. B. Burton, Superintendent of the Shasta Division, wrote Claimant as follows:

No.”

It is evident from the foregoing that claimant's testimony regarding the memoranda of her activities on the job in question is contradictory. She states that said memoranda are a “record of everything”, yet her answers to subsequent questions reveals that her memoranda are not, in any sense of the word, complete. It must be concluded, then, since claimant stated her records were complete whereas they were actually quite incomplete, that what claimant thought to be satisfactory performance of her job, was actually unsatisfactory, as the transcript shows.

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 April 12, 1960 (including holiday allowances) and each day thereafter until she is 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 until July 5, 1960, when she would have been displaced by senior Clerk O. M. Reynolds, who actually displaced the incumbent of MofW Clerk Position No. 119 that date.

CONCLUSION

The claim in this docket is entirely lacking in merit by reason of the fact that carrier exercised its prerogative under Rule 36 of the current agreement, and carrier requests that said claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The question in this case is whether the Carrier's disqualification of Claimant, Mrs. P. W. Gilzean, from a Maintenance of Way Clerk position was arbitrary. The burden to show this is on the employees. They have not met this burden. Claim must be denied.

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 Employees involved in this dispute are respectively Carrier and Employees 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 9th day of September 1964.