Award No. 14056
Docket No. CL-14835

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY — TEXAS AND LOUISIANA LINES

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, (GL-5508), that:

(a) The Carrier violated the current Clerks' Agreement when on May 9, 1962, Carrier arbitrarily and capriciously refused to permit common laborer Mrs. Ruth Alexander to displace Storehouse Laborer Monie Baylor, her junior, at the Purchasing-General Stores Department, Houston, Texas, solely because she was a female.

(b) Mrs. Ruth Alexander be paid a day's pay for May 9, 1962, at the appropriate rate of pay and for each succeeding day thereafter that she was deprived of work as a result of this violation of the agreement.

EMPLOYES' STATEMENT OF FACTS: Mrs. Ruth Alexander was employed by the carrier as laborer in its Store Department, Houston, Texas, on October 27, 1943, and continued to hold a regular assignment as Laborer in that department until May 9, 1962. As a result of a reduction in the laborer forces effective May 9, 1962, she made request to displace Storehouse Laborer Monie Baylor, her junior, which request was denied by Purchasing Agent Martin and she was advised by carrier's representative to turn in her time card and not report for work until she was given notice to do so, thus Mr. Martin not only declined her request to displace Monie Baylor but any other laborer her junior. She then on May 18, filed claim for a day's pay at the pro rata rate of Storehouse Laborer for May 9, 10, 11, 14, 15, 16, 1962 and each succeeding day thereafter when the carrier used Monie Baylor to perform Laborer's work. The claim was declined by Mr. Martin on May 29, 1962. On June 2, 1962 she advised Mr. Martin that his decision wasn't acceptable and she was turning the claim over to her Local Chairman. On June 10, 1962 the Local Chairman wrote Mr. Martin requesting the claim be allowed until she was given an opportunity to prove that she could do

perior within five (5) days of the date of the advice of discipline, and the hearing shall be granted within five (5) days thereafter.'

"Under the application of the above rule, when claimant was relieved on July 5, 1956, he had the right to request an investigation to determine whether or not he was properly removed from the position or whether the action of the Carrier was arbitrary, but no request for an investigation has been made in this case. Therefore, we are forced to hold that in the absence of claimant complying with the plain wording of the rule there is nothing that this Board can do but to interpret the rules to mean that claimant here has failed to avail himself of the provisions of the rule."

CARRIER'S EXHIBIT NO. 3 reproduces this Award of Special Board of Adjustment No. 100.

CONCLUSION:

Carrier has shown that Mrs. Ruth Alexander was employed as common laborer in the Stores Department at Houston when it was impossible because of the War to employ men capable of performing **all** of the work of common laborer. Carrier has shown that Mrs. Alexander was given employment as long as there was a position available to her by reason of her seniority, the duties of which were light enough for her to perform. Carrier has shown that the decision to deny Mrs. Alexander the right to displace on a job, **all** of the duties of which she was not capable of performing, was a proper one. Carrier has shown that Claimant and her representatives did not avail themselves of the opportunity under the rules for a hearing but were content to rely upon seniority alone as a basis for the claim here presented. Carrier has shown that claimant has failed in her responsibility to present positive proof to support this claim.

Wherefore, premise considered, Carrier respectfully requests that the Board deny in all its particulars this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a companion case to Award No. 14055. It involves the same parties, Agreement, issue and measure of proof. For the reasons stated in that Award we will deny the instant claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of December 1965.

LABOR MEMBER'S DISSENT TO AWARD 14056, DOCKET CL-14835

This is a companion case to Award No. 14055, Docket CL-14821; it involves the same parties, Agreement, issue and measure of proof. For the reasons stated in my dissent to Award 14055, I register equal dissent to this Award 14056.

/s/ C. E. Kief
C. E. Kief,
Labor Member
1-19-66