

Award No. 14113
Docket No. CL-15152

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, 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-5607) that:

(a) The Southern Pacific Company violated the Agreement between the parties at Sacramento, California, when it failed and refused to assign employes Ruby Means, Cloa Scaggs, Dorothy Montgomery, Mary Montagner and Bessie May to positions of Shipping and Receiving Clerk, but, instead, assigned such positions to junior employes; and,

(b) The Southern Pacific Company shall now be required to allow Ruby Means eight hours' additional compensation at rate of Shipping and Receiving Clerk October 19, 1960, and each day thereafter until she is assigned to position of Shipping and Receiving Clerk; and,

(c) The Southern Pacific Company shall now be required to allow Norine McDonald all wage loss suffered pursuant to displacement October 19, 1960, by Ruby Means; and,

(d) The Southern Pacific Company shall now be required to allow Maria Sanchez all wage loss suffered pursuant to displacement October 19, 1960, by Ruby Means; and,

(e) The Southern Pacific Company shall now be required to allow Cloa Scaggs, Dorothy Montgomery, Mary Montagner and Bessie May eight hours' additional compensation each at the rate of Shipping and Railway Clerk October 14, 1960, and each day thereafter until assigned to positions of Shipping and Receiving Clerk.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions (hereinafter referred to as the Agreement), between the Southern Pacific Company (Pacific Lines) (hereinafter referred to as the

OPINION OF BOARD: Pursuant to a letter of agreement dated September 26, 1960, a total of thirty (30) Helper positions and Stockman's Assistant positions were reclassified to positions of Receiving and Shipping Clerk. The duties assigned to the positions of this title included those of checking, shipping and storing material, which work included the physical handling of items weighing from one to several hundred pounds. Under date of October 3, 1960, thirty (30) positions entitled Shipping and Receiving Clerk were bulletined to General Stores employees at Sacramento, California, employees covered by the Agreement.

Claimants, all of them women, made application for positions listed on Bulletin No. 182, wherein eighteen (18) positions were listed. None of the Claimants were assigned, although employees junior to them were awarded positions.

Claimants contend that they were qualified to fill the positions and by reason of their seniority should have been awarded the positions bid for.

It is Carrier's position that as the duties of Shipping and Receiving Clerk call for lifting articles in excess of twenty-five (25) pounds, Claimants were precluded from qualifying for the positions by reason of Rule 8 of the Agreement and the California State Law prohibiting women from being required to lift articles weighing in excess of twenty-five (25) pounds pursuant to paragraph 17 of Industrial Welfare Commission Order No. 9-57.

"RULE 8. WOMEN

The pay of women employees for the same class of work shall be the same as that of men, and their working conditions must be healthful and fitted to their needs. The laws enacted for the government of their employment must be observed."

In response to Carrier's position, Claimants contend that they had held helper and other positions over the years, the duties of which occasionally required the lifting of materials in excess of twenty-five (25) pounds; **that heavy materials were handled by hand trucks and the help of co-workers.**

In Petitioner's submission in the Record it said: "There were always plenty of men around to assist wherever it was necessary to handle items in excess of twenty-five pounds, beyond their lifting capacity."

It is quite apparent from the Record that following the reorganization, as agreed upon, the former type of operation became entirely impracticable.

"Whether an employe possesses sufficient fitness and ability for a position within the meaning of the rules is a matter exclusively for the Carrier to determine, and such a determination once made will be sustained until it appears that the action was capricious or arbitrary." See Award No. 12994 (Hall) and Awards cited therein.

There can be no question but that the State of California in the exercise of its police powers had a right to regulate the employment of women for the purpose of protecting their health and safety.

As was said in Award 12970 (Hamilton): "The agreements and contracts which this Board is called upon to interpret must be construed in concert with existing laws and regulations."

For the foregoing reasons the Board is convinced that the action of the Carrier in denying to Claimants positions listed in Bulletin No. 182 was neither arbitrary nor capricious and that the Agreement was not violated.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of January, 1966.