

Award No. 14387
Docket No. CL-14100

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5348), that:

1. The Carrier violated the Clerks' Agreement when at 5:00 P. M., July 31, 1961, it discontinued the position of Matron, Roanoke, Virginia General Office Building, incumbent Laura H. Rock, and assigned the work attaching thereto to employees in another seniority district and to others not covered by the Clerks' Agreement.

2. Claimant Laura H. Rock shall now be paid one day's pay at the pro rata rate based on the monthly rate of \$386.95 for August 1, 1961 and each subsequent work day until such time as she is restored to her position of Matron. This claim is in addition to any other compensation allowed.

EMPLOYEES' STATEMENT OF FACTS: Under the provisions of the Clerks' Agreement dated July 1, 1944, there existed two Class 4, Classification 8, positions in the Carrier's Roanoke, Virginia General Office Buildings, such positions being identified as Matron and Assistant Matron. A separate seniority roster was maintained covering such positions and employees in that seniority classification. (Employees' Exhibit A).

Under the provisions of the above Agreement, Cleaners in the General Office Buildings were carried on a separate seniority roster and identified as Class 4, Classification 9. (Employees' Exhibit B.)

When the current Clerks' Agreement was executed, which bears the effective date of October 1, 1959, the Matron and Assistant Matron were identified as Group 4 employees and Seniority District No. 23 was established to cover same. A separate seniority roster was maintained. (Employees' Exhibit C.)

Concurrently with the execution of the above Agreement, the Cleaners were identified as Group 4 employees and Seniority District No. 21 was established to cover same. A separate seniority roster was maintained. (Employees' Exhibit D.)

and its employees represented by the Brotherhood of Railway and Steamship Clerks, which Agreement was made effective October 1, 1959. Copies of such Agreement are on file with your Board and are, by reference, made a part hereof.

A separate seniority district was maintained for Matrons employed in the Carrier's General Office Buildings at Roanoke, Virginia, under provisions of the previous Clerks' Agreement which was in effect from July 1, 1944, until the current Agreement became effective on October 1, 1959. Under provisions of Rule 2 of the current Agreement effective October 1, 1959, a separate seniority district continued to be maintained for these Matrons.

Mrs. Mattie W. Stott had established seniority date of September 1, 1921, as Matron in this seniority district. Mrs. L. H. Rock, the claimant in this case, entered the Carrier's service as Assistant Matron on April 16, 1946. She was promoted to and established seniority as Matron with seniority date of February 16, 1948. Since the latter date, Mrs. Stott and Mrs. Rock have been the only employees holding seniority as Matrons in the Carrier's General Office Buildings at Roanoke.

The position of Matron formerly occupied by Mrs. Rock was abolished effective April 25, 1958. Subsequent to April 25, 1958, only one position of Matron was maintained by the Carrier in its General Office Buildings at Roanoke, which position was scheduled to work from 8:00 A.M. to 5:00 P.M., Monday through Friday, with rest days Saturday and Sunday, and the position was not filled on the Saturday and Sunday rest days.

The sole remaining position of Matron was occupied by Mrs. Stott until she became disabled on January 20, 1961. Mrs. Rock was recalled to service on February 11, 1961, and she continued to fill the last remaining position until it was abolished effective at 5:00 P.M. on Monday, July 31, 1961.

The Employees filed "Claim in favor of Mrs. Laura H. Rock for one day's pay at the monthly rate of \$386.95 for August 1, 1961 and each subsequent work day until such time as she is restored to her position of Matron in the General Office at Roanoke, Virginia."

The Carrier declined the claim.

OPINION OF BOARD: Under the provisions of the parties' Agreement effective July 1, 1944 a separate seniority district was maintained for Matrons employed in the Carrier's General Office Buildings at Roanoke, Virginia. This separate seniority district was continued under the current Agreement effective October 1, 1959. Subsequent to April 25, 1958 only one position of Matron was maintained in the General Office Buildings at Roanoke, this position being scheduled to work from 8:00 A.M. to 5:00 P.M., Monday through Friday.

Effective at 5:00 P.M. on July 31, 1961 the Carrier abolished this sole remaining Matron position, the incumbent of which was Mrs. Laura H. Rock. A claim was then filed in behalf of Mrs. Rock. The Organization contends that the work of this position remained to be performed; and that the Carrier violated the Agreement by transferring this work to Cleaners — who are in a different seniority district under the Agreement, and to the Medical Examiner and/or his staff — who are not covered by the Agreement. The Cleaners' seniority district is also restricted to the Carrier's General Office Buildings at Roanoke.

We find that the claim as appealed to the Board was adequately discussed on the property and that no fatal procedural error prevents our consideration of the claim on its merits. The Agreement places Matrons and Cleaners in Group 4 but does not define their duties.

The evidence does not establish that any work exclusively assigned to the Matron was transferred to the Medical Examiner and/or his staff following the abolishment of the Matron position. Thus there is no basis for holding that work was improperly removed from the coverage of the Agreement.

With respect to the work allegedly transferred to Cleaners, there is insufficient proof that the inspection and reporting of necessary repairs in the women's toilets was the sole or exclusive responsibility of the Matron. Nor is it established by the record that following the abolishment of the remaining Matron position, Management assigned to Cleaners the sole responsibility for this task. It is clear, however, that from about 1953 until the disputed abolishment on July 31, 1961, the Matron was assigned sole responsibility for furnishing and maintaining all supplies (soap, towels, toilet paper, etc.) in the women's toilets in the General Office Buildings.

The Carrier notes that Cleaners have historically done the cleaning work in both the men's and women's toilets, and that until 1953 they also maintained supplies in all toilets for both sexes. Carrier states that the Matron began supplying the women's toilets about 1953 because it was then discovered that she had "practically no work to perform." Thus the Carrier states that when the Matron position was abolished on July 31, 1961 the subject work was returned to the source whence it came. The Cleaners, who continued providing supplies in the men's toilets without interruption after 1953, therefore resumed the supply work for the toilets of both sexes immediately following the abolishment of the lone Matron position. The Organization notes that when the present Agreement was negotiated in 1959 no change was made in the Matron's assigned task of supplying the women's toilets. There is some conflict in the record concerning the amount of time required for supplying the women's toilets. But in any event, the amount of such work cannot be regarded as de minimis.

Under the circumstances, we think that the Matron had a seniority claim to the work of supplying women's toilets and that this work could not be transferred to a different seniority district except by mutual consent of the parties. We conclude, therefore, that the Carrier violated the Agreement by unilaterally transferring this work to Cleaners, who are in a separate seniority district. It will be held that Claimant shall be compensated in the amount she would have earned had her Matron position not been abolished less any earnings in other employment subsequently acquired, during the period beginning with the abolishment of said position and ending with the correction of the violation.

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 Carrier violated the Agreement to the extent shown in Opinion.

AWARD

Claim sustained in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1966.

DISSENT OF CARRIER MEMBERS TO AWARD 14387, DOCKET CL-14100

The Referee sustained the claim solely on the basis the work of supplying women's toilets was transferred to cleaning forces in face of the showing that these duties had previously been transferred from the cleaning forces to the Matron because she "had practically no work to perform." Under these facts, which were recognized by the Referee, the Claimant could not possibly have acquired an exclusive right to the performance of these duties and the record is barren of any proof by the Petitioner, upon whom the burden of proof lies, that Claimant did have such exclusive right. Nothing in the Agreement accorded Claimant an exclusive right to duties she previously had no such right to.

Based upon the record, there was no proper basis for the Referee's conclusion that "the Matron had a seniority claim to the work of supplying women's toilets and that this work could not be transferred to a different seniority district except by mutual consent of the parties."

The Referee compounded his error by the reparations awarded. While he states that "the amount of such work cannot be regarded as de minimis," the only statement in the record as to the actual amount of time in supplying women's toilets was that the "work is normally completed within 45 minutes and never more than one hour." There is no proper basis for awarding a day's pay for forty-five minutes or one hour's work, even had the Petitioner proved the exclusive right of the Claimant to the work. Nothing in the Agreement requires that Carrier create a sinecure for any employee.

Award 14387 is palpably erroneous and we dissent.

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