# Award No. 14429
# Docket No. CL-12731

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

**(Supplemental)**

G. Dan Rambo, Referee

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## PARTIES TO DISPUTE:

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

## SOUTHERN PACIFIC HOSPITAL DEPARTMENT

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-4979) that:

(a) The Southern Pacific Hospital Department violated the Agreement between the parties effective October 1, 1940, as amended, when it failed and refused to allow clerk Laurie Burbank a seniority date of March 3, 1959, the date on which her pay started on the clerical roster in the Southern Pacific Hospital Department and Sanatorium at Tucson, Arizona; and,

(b) The Southern Pacific Hospital Department shall now be required to allow clerk Laurie Burbank a seniority date of March 3, 1959, and compensate her for the difference between the amount actually paid to her for services performed and cashier's rate, beginning fifty-nine (59) days prior to the date claim was received by the Southern Pacific Hospital Department and continuing each date thereafter until she is allowed such seniority date and compensated at cashier's rate of pay.

(c) The Southern Pacific Hospital Department violated the Agreement between the parties effective October 1, 1940, as amended, when it failed and refused to call and use Mrs. Charlotte Perry for clerical work covered thereby but, instead, used an individual with no seniority rights thereunder; and,

(d) The Southern Pacific Hospital Department shall now be required to compensate Mrs. Charlotte Perry, her substitutes and/or successors, if any, eight hours' additional compensation at rate of cashier-clerk, in addition to any other earnings or benefits however derived, beginning fifty-nine (59) days prior to the date claim was received by the Southern Pacific Hospital Department and continuing each date thereafter until the violation is corrected; and,

(e) The Southern Pacific Hospital Department shall be required to establish a position of cashier-clerk at the Tucson Hospital and advertise it for seniority choice of the employes on the clerical roster of the Hospital Department.

EMPLOYES' STATEMENT OF FACTS:

1. 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 Carrier) and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, (hereinafter refererd to as the Employes) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute. The Agreement is likewise applicable to the Southern Pacific Hospital Department (hereinafter referred to as the Hospital Department) and its employes represented by the Employes.

2. Prior to 1945 the Hospital Department was considered a Department of the Carrier, and the Rules of the Agreement applied without question to those employes who were classified thereunder. As result of arbitration award during 1945 the management of the Hospital Department was delegated to a Board of Managers consisting of seven Labor and six Carrier representatives, and the Hospital Department continued to apply the rules and working conditions of the Agreement, except certain rules which governed the transfer of employes between the Carrier and the Hospital Department.

On February 1, 1955, the Employes resolved a long standing scope rule dispute with the Carrier, at which time the Hospital Department was excluded therefrom. Thus, it was necessary to serve the Hospital Department with formal notice under the Railway Labor Act in order to apply the same provisions reached with Carrier. As a result of this notice, a memorandum of agreement was signed June 7, 1955, providing that the Agreement with Carrier, reprinted to include revisions May 2, 1955, would apply to employes of the Hospital Department represented by the Employes.

3. The Hospital Department operates Southern Pacific Hospitals at San Francisco, California, and Tucson, Arizona. In addition, at the large locations on the property, such as Portland, Ogden, Los Angeles, El Paso, etc., it maintains medical departments under supervision of Division Surgeons, and at these and many other locations where the number of employes warrant, emergency hospitals are maintained in shop grounds.

At the outset and for a number of years thereafter employes with minor ailments were able to visit these hospitals for treatment as out-patients, and ordinary medicines necessary to continue treatment were furnished free of charge; however, the Hospital Department did not furnish vitamins, glandular products, liver extract (except for pernicious anemia) and other patent or proprietary medicines, nor medicines prescribed by other than Department doctors. On March 9, 1959, the Hospital Department Board of Managers voted to discontinue all "take-home" medicines.

4. Prior to November 16, 1952, the duty of handling funds in connection with sale of proprietary medicines, hospital bills, insurance form fees, making

This claim was also denied by the Business Manager, (Hospital Department Exhibit D) by letter dated May 23, 1960, on the basis that work performed in the Pharmacy by Laurie Burbank is work of Pharmacy Helper which position is not within the scope of the Clerks' Agreement.

The Petitioner's General Chairman further handled the claims with the Business Manager; however, the exchange of correspondence is of no value as the Business Manager, the highest officer of the Hospital Department delegated to handle agreement matters, already rendered his decision, Hospital Department Exhibits B and D.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This claim may be divided for purposes of settlement into three parts: (a) and (b) involving Claimant Laurie Burbank; (c) and (d) involving Claimant Charlotte Perry; and (e) involving establishment of a cashier-clerk position in Carrier's operation at Tucson Hospital.

Carrier raises the objection that this claim is barred by the following provision of Article V of the National Agreement of August 21, 1954:

> "1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:
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> * * * * *
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> (c) The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. **All claims or grievances involved in a decision by the highest officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board** or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to." (Emphasis ours.)

It is established by the record that Mr. H. J. Short as Business Manager of the Hospital Department of Carrier is the highest officer of that department designated to handle claims or grievances; that all correspondence related to these matters was directed to him, both on the property and by this Board; that he declined the first part of the claim involving Claimant Laurie Burbank by letter dated June 2, 1960; that he declined the second part of the claim involving Claimant Charlotte Perry by letter dated May 23, 1960; that written notice of intention to here file this claim was served on this Board by letter dated June 5, 1961.

There is no evidence in the record of any agreement between the parties to extend the nine months' time limit or of any requests for such extension. Subsequent correspondence or conferences on the claim cannot be interpreted as agreement to extension of the mandatory time limit. This limit must be complied with unless waived by both parties.

This Division has ruled on numerous occasions that the initial decision by the highest designated officer begins the running of the 9-month period and that subsequent handling of a claim with the highest designated officer does not extend the time within which proceedings must be instituted before the appropriate Division of this Board: See Awards 10347 (LaBelle); 10688 (Mitchell); 11777 (Hall); 12417—12418 (Coburn); 12899 (Hall); 13942 (Dorsey); 14139 (Without Referee); 14171 (Wolf).

As to the third portion of the claim involving establishment of a cashier-clerk position on the property, this Board is wholly without authority to compel the establishment of any position.

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

Claims (a), (b), (c) and (d) are barred under the National Agreement of August 21, 1954.

Claim (e) is dismissed for want of authority.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1966.

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