

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, 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-5393) that:

(a) Carrier violated the Rules of the Clerks Agreement at Oakland, California, when it failed to call and use Gladys Amick for a vacancy on Position No. 454, Steno Clerk, on Saturday, September 2, 1961, in accordance with her seniority rank; and,

(b) Carrier shall now be required to allow Gladys Amick eight hours' compensation at the time and one-half rate of Position No. 454 for September 2, 1961.

EMPLOYEES' 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 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 is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. On Saturday, September 2, 1961, Position No. 454, Steno-Clerk, Chief Dispatcher's office, hours 3:00 P.M. to 11:00 P.M., was vacant account illness of regular incumbent. Absent of an eligible unassigned employee, Carrier filled the vacancy by regular assigned employee Richard Oakman, seniority date August 10, 1954, temporary incumbent of Position No. 426, hours 8:00 A.M. to 4:00 P.M., rest days Saturday and Sunday.

Gladys Amick (hereinafter referred to as the Claimant) was the regular assigned incumbent of Position No. 451, Steno-Clerk, Chief Dispatcher's office, hours 7:00 A.M. to 3:00 P.M., rest days Friday and Saturday, seniority date August 16, 1944.

Notwithstanding Claimant was senior to employee Oakman, and off-duty on a rest day, no attempt whatsoever was made to call her to Position No. 454.

3. By letter date October 30, 1961 (Carrier's Exhibit A), Petitioner's Division Chairman submitted claim to Carrier's Division Superintendent on behalf of Claimant for "... eight (8) hours' compensation at rate of Position No. 454 Steno-Clerk, hours 3 P. M. to 11 P. M., for Saturday September 2, 1961, ..." By letter dated November 17, 1961 (Carrier's Exhibit B), Division Superintendent denied the claim advising Division Chairman in effect that Claimant was not used because of the prohibitive features of applicable State Laws and Rule 8 of the current agreement.

4. By letter dated January 5, 1962 (Carrier's Exhibit C), Petitioner's General Chairman appealed claim of Claimant Amick to Carrier's Assistant Manager of Personnel. However, in that letter, it will be noted, the claim has been amended to read "... for eight (8) hours' overtime compensation at rate of Steno-Clerk No. 454 for Saturday, September 2, 1961, ..." Emphasis ours. By letter dated April 23, 1963 (Carrier's Exhibit D), Carrier's Assistant Manager of Personnel denied the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts are not in dispute. Claimant held a regular position as Stenographer-Clerk, hours 7:00 A. M. to 3:00 P. M. Sunday through Thursday, with rest days Friday and Saturday. On Saturday, September 2, 1961, Position No. 454, with hours from 3:00 P. M. to 11:00 P. M., was vacant because the regular assigned employe was ill. Carrier assigned an employe to fill that vacancy who was junior in seniority to Claimant, which the Employees say is in violation of several rules of the Agreement, particularly Rule 34.

Rule 8 of the applicable Agreement reads:

"RULE 8. WOMEN

The pay of women employes 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 need. The laws enacted for the government of their employment must be observed." (Emphasis ours.)

Section 3(a) and (d) of the State of California Industrial Commission's Order No. 9-57 state:

"3. HOURS.

(a) No woman eighteen (18) years of age or over shall be employed more than eight (8) hours in any one day nor more than six (6) days in any one week except under the following conditions:

* * * * *

(d) The eight (8) hours of employment shall be performed within a period of not more than thirteen (13) hours. Eleven (11) hours shall elapse between the end of one work day of the employe and the beginning of the next, except when there is a bona fide change of shift, but in no event shall the elapsed time be less than eight (8) hours." (Emphasis ours.)

If Claimant had been assigned to work on Saturday, September 2, 1961, she would have completed her assignment at 11:00 P.M. She was scheduled to start work on her regular assigned position at 7:00 A.M. on Sunday, September 3, 1961. Only eight (8) hours would have elapsed between her quitting time on Saturday, September 2 and her regular starting time on Sunday, September 3.

Employees admit all of this, but argue that "this fact had nothing whatever to do with her right to work Position No. 454 as it is crystal clear that the State Law referred to could not become active until she had **already worked Position No. 454** and would be required to perform service on her own position eight hours later at 7:00 A.M. on the next calendar day."

We do not agree. Claimant had every right to work her position on Sunday. Carrier could not blank that position, nor could it assign another employe to substitute for the Claimant in order to avoid a violation of the Commission's Order. There is no reason why Carrier may not anticipate a clear violation of a rule or statute and take appropriate action to avoid it.

The Commission's Order is clear, meaningful and specific. Rule 8 obligates the Carrier to observe that Order. Claimant became "unavailable" on Saturday, September 2 because of the limitations contained in that Order based upon the fact in this case.

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 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 28th day of October 1966.