

Award No. 15168
Docket No. CL-16267

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**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5934) that:

(a) Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-7 and 3-C-1, when it refused to permit Mrs. Lucy M. Volpicelli, Coat Press Operator in the Laundry of the Dining Car Department, Sunnyside Yard, Long Island City, New York, to return to duty and exercise seniority.

(b) Claimant Volpicelli should be allowed compensation due her for each date commencing May 8, 1964 and continuing until adjusted. (Docket 1543.)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimant in this case held a position and the Pennsylvania Railroad Company — hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimant in the instant case, Mrs. Lucy M. Volpicelli, held a regular position of Coat Press Operator in the Laundry, Dining Car Department, Sunnyside Yard, Long Island City, New York, on May 7, 1963. She has a seniority date of May 6, 1946, on the seniority roster of the System General Office, Dining Car Department, in Group 2, Seniority District No. 2. She therefore had seventeen years' service with the Carrier at this time.

The Division Chairman, Brotherhood of Railway and Steamship Clerks, listed the claim for discussion with the Assistant Personnel Manager, Dining Car Service at the regular monthly meeting on July 13, 1964. In a letter dated July 20, 1964, the Assistant Personnel Manager denied the claim. The Manager, Dining, Sleeping and Parlor Car Service and the Division Chairman subsequently completed a Joint Submission covering this dispute in order that it could be progressed to the General Chairman and the Manager-Labor Relations, the highest officer of the Carrier designated to handle disputes on the property. A copy of the Joint Submission is attached as Exhibit A.

The claim was discussed by the General Chairman and the Manager-Labor Relations at a meeting held on January 20, 1965, following which the latter, by letter dated March 11, 1965, denied the claim, but also stated that:

"... we would be agreeable to the selection of a Board of Doctors to examine the claimant to determine whether she is physically qualified to return to her former position of Coat Press Operator, with the understanding she is under no circumstances entitled to any monetary payment, and that the decision of the Board of Doctors will be final.

It is also understood that one member of the Board of Doctors will be selected by Management, one member by your Organization, and the third, or neutral, member will be selected by the other two members. The fees and expenses of the neutral member will be paid in equal shares by the Organization and the Carrier, and the latter two parties will pay the fees and expenses of their respective appointees.

Will you please advise if you are agreeable to the selection of a Board of Doctors as set forth above."

The General Chairman replied under date of May 12, 1965 that he wanted the claim to be given further consideration. He did not advise whether he was agreeable to the selection of a Board of Doctors.

By letter dated June 24, 1964, the Manager, Labor Relations advised the General Chairman as follows:

"In the light of your letter of May 12, 1965, we carefully investigated and reviewed all aspects of this case, but can find no basis upon which the claim herein can be given further consideration.

Under such circumstances, our denial of this claim is reaffirmed and our proposal relative to the selection of a Board of Doctors is withdrawn."

Therefore, so far as the Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether the Claimant's rights under the applicable Agreement were violated when she was not permitted to return to her position of Coat Press Operator and whether she is entitled to the compensation claimed.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was employed by Carrier on May 6, 1946, as a Mangle Operator in the Laundry of the Dining Car Department. At the same location she began working the position of Folding Machine Operator on July 22, 1947; and, on August 5, 1947, she began working the position of Coat Press Operator.

On November 12, 1957 Claimant alleged that as she was locking the coat press, by a push button designated for that purpose, she experienced a pain in her left wrist. There followed a long medical and surgical history causing numerous off duty periods, detailed in the Submissions.

Following a prolonged absence from duty attributable to swollen, painful, tender hands, wrists and fingers of both hands, Claimant's position having been abolished she, on June 4, 1964, served notice of intention to displace a junior employe holding a position of Coat Press Operator. In conformity with usual procedure she was advised she would have to receive approval of the medical department.

Throughout the period from November 1957 to June 18, 1964, Claimant was repeatedly examined by Carrier's Medical Department, by specialist to whom she was referred by that Department, by at least two physicians of her own choosing; and, submitted to surgical procedures. On June 18, 1964, Carrier's medical officer found Claimant not physically qualified for the position of Coat Press Operator.

The record is persuasive that: (1) Claimant had a chronic physical disability in both hands and wrists which was aggravated when she performed the duties of operating the coat press; and (2) the June 18, 1964 medical disqualification was supported by substantial evidence. We find accordingly. See, Awards No. 13841, 14881, 14249, 14866.

The Claim is that Claimant was denied her seniority rights when Carrier refused to honor her notice of intent, of June 4, 1964, to displace a junior Coat Press Operator. An indispensable condition to perfect a right to effectuate such a displacement was that Claimant be physically qualified to perform the duties of the position. She was not. Therefore, she was not denied her seniority rights within the contemplation of the Agreement.

In argument before the Board, Petitioner contended that Claimant was denied her seniority rights to displace on any other position—other than Coat Press Operator—to which she had accrued such rights. We find no evidence in the record to support the contention.

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 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 20th day of January 1967.

Keenan Printing Co., Chicago, Ill.

Printed in U.S.A.