

Award No. 18396

Docket No. CL-18498

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE 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-6693), that:

(a) The Southern Pacific Company violated the current Clerks' Agreement between the parties when on April 10, 1967, it arbitrarily and capriciously refused to accept an application from employe Anita E. Russell for assignment to position of Clerk-Grade "A," Sacramento, in keeping with her seniority rights;

(b) The Southern Pacific Company shall now be required to compensate the employe for loss of earnings at the Guaranteed Extra Board minimum daily rate, five (5) days per week, beginning April 10, 1967, and continuing through April 21, 1968.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including subsequent 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, Airline 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.

On October 18, 1965, Anita E. Russell (hereinafter referred to as Claimant) sustained a minor personal injury while on duty and was treated by a physician for a forehead laceration and thereafter held from service.

Superintendent E. I. Norman, Sacramento General Shops, referred the Claimant on October 19, 1965, to the Southern Pacific Hospital for examination and she was admitted to the Hospital on October 20. When discharged, she was not furnished with a return-to-duty certificate.

By letter dated November 24, 1965, Chief Surgeon Vance M. Strange referred Claimant's case back to the Carrier for disposition and with a recom-

for further discussion. On March 11, 1968, carrier's superintendent wrote the claimant as follows:

"In accordance with recent understanding between your representative and Management, you should report to Harkness Community Hospital, San Francisco, for examination and evaluation concerning restrictions on your service."

Claimant reported to Harkness Community Hospital and Medical Center on April 14, 1968 and by letter April 16, 1968 (copy attached as Carrier's Exhibit I), the Chief Surgeon recommended that she be permitted to return to the unrestricted duties of clerk-messenger. Claimant was so advised and she made displacement on position of junior clerk, Sacramento General Shops, effective April 22, 1968 and returned to work on that date. By letter April 26, 1968 (copy attached as Carrier's Exhibit J), petitioner's general chairman was advised of claimant's return to duty as recommended by the Chief Surgeon.

At conference between the parties on August 22, 1968 the claim in this case was removed from the docket of cases for discussion. At conference of January 16, 1969, claim was discussed and denied, confirmed by letter January 21, 1969 (copy attached as Carrier's Exhibit K), from carrier's assistant general manager to petitioner's general chairman. On February 4, 1969 petitioner's general chairman advised that decision was not accepted.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant's application for position of Clerk — Grade A, made on April 10, 1967, was denied and on the basis of this denial the Organization contends that the employee is entitled to compensation for lost earnings for a period set out in the claim.

In 1965, Claimant was referred to the Southern Pacific Hospital for examination. She was admitted on October 20 of that year and following her release, the Chief Surgeon (on November 24, 1965) recommended:

"... this fine lady avoid duties involving moving equipment or climbing."

Based on this letter, Carrier disqualified Claimant from her position as junior clerk. In April, 1967, Claimant applied for the Guaranteed Extra Board, and that request was declined by the Carrier, saying:

"... the guaranteed extra board is not devised to afford compensation to those who by inaptitude or physical restrictions are unable to perform any service or at least sufficient service to warrant such placement."

There are other hospital reports contained in this record indicating that Claimant's physical condition was of a serious nature. And there is the final report clearing Claimant for her duties, which Carrier followed.

We cannot find that Carrier abused its managerial rights in following the medical counsel it received.

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February, 1971.