

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Honorable Paul Samuel, Referee

PARTIES TO DISPUTE:

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

WABASH RAILWAY COMPANY

DISPUTE.—"Violation of the seniority provisions of the Schedule Agreement for Clerks, effective August 1, 1929, by the refusal to permit Mr. F. A. Becker, whose position was abolished effective March 1, 1934, to displace Mr. C. B. Willi, employee in the General Freight Traffic Department offices at St. Louis, Missouri, holding a position of Assistant Tariff Clerk, paying basic rate of \$5.78 per day. Request that Mr. Becker be assigned to the position of Assistant Tariff Clerk and reimbursed for monetary loss sustained because of his being denied position of his choice, and required to displace on a position paying basic rate of \$4.51 per day; claim is made, retroactive to March 1, 1934."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon. Hearing was had on March 27, 1935, and later the Division was unable to agree upon an award because of a deadlock. Paul Samuel was selected as Referee to sit with the Division and make an award. A majority of the Members of the Third Division so constituted finds that:

An agreement bearing date of August 1, 1929, is in effect between the parties.

Position of Correspondence Clerk, basic rate of \$5.78 per day, in the General Freight Department of the Traffic Offices at St. Louis, Missouri, was abolished through bulletin issued by the General Freight Agent under date of February 20, 1934, effective March 1, 1934.

Mr. F. A. Becker, seniority date February 7, 1925, served notice on the General Freight Agent February 20, 1934, that, due to his position being abolished, he wished to displace on position of Assistant Tariff Clerk, basic rate \$5.78 per day, held by C. B. Willi, seniority date September 17, 1925. Mr. Becker was denied the right to displace Mr. Willi on the ground that he did not possess sufficient fitness and ability to take over the duties and responsibilities of the position, and under date of February 27, 1934, he notified the General Freight Agent of his intention to displace on position of Assistant Correspondence File Clerk, paying basic rate of \$4.51 per day; such action being under protest, pending the final handling of his first request. The position of Assistant Correspondence File Clerk was awarded to Mr. Becker and he assumed its assignment of duties March 1, 1934.

Claim is based on fifth paragraph, section (r), Rule 11, reading:

"Employees whose positions are abolished may exercise their seniority rights over junior employees. Other employees affected may exercise their seniority in the same manner."

The Carrier refused to permit Mr. F. A. Becker to exercise his seniority rights by displacing Mr. C. B. Willi, a junior employee, stating that clerk Becker did not have sufficient fitness and ability to handle the duties of the position, as required under the following rule:

"Employees displacing junior employees shall be allowed a reasonable time to qualify, and, failing, shall retain all their rights, may bid on any bulletined position, but may not displace any regularly assigned employee.

"Displacement rights shall be based on seniority, fitness, and ability. Fitness and ability being sufficient, seniority shall prevail, the immediate supervising officer to be the judge in the same manner as bulletined assignments are now awarded in section (a) of Rule 11."

The Third Division is of the opinion that the Carrier was justified in the action taken, inasmuch as the evidence in this cause discloses that at the time this dispute arose Mr. Becker was without sufficient fitness and ability to properly perform the duties of the position which he sought.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON.

Secretary.

Dated at Chicago, Illinois, this 25th day of June 1935.