

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY**

DISPUTE.—“Claim of employees for two days' pay January 19th and 20th, 1935, at rate of \$3.75 per day on position of Caller at Denver Yard Office, and correction of date of Sept. 4, 1925, which was given Mr. Herbert Ziegler by the Management, making him senior to Mr. Cox and other employees.”

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.

The following statement of facts is jointly certified by the parties and the Third Division so finds:

“Effective January 16, Mr. Drew Cox was displaced from the position of patrolman by a senior employee in the exercise of his rights, and on the 19th Mr. Cox made request, based on his seniority date of September 9, 1929, to displace Mr. Herbert Ziegler on the position of train crew caller, which request was denied.”

An agreement bearing effective date of February 1, 1926, exists between the parties, and the employees' claim is based upon the “seniority” rules thereof, more specifically Rule No. 20, reading:

“* * * when forces are increased employees shall be returned to service in the order of their seniority rights in their districts, subject to the provisions of Rule 5. Employees desiring to avail themselves of this rule must file their addresses with the proper official at time of reduction and advise promptly of any change in address and renew address each ninety (90) days. Employees failing to renew their address each ninety (90) days, or return to the service within seven (7) days after being notified * * * or give satisfactory reason for not doing so will be considered out of service.”

and Rule No. 21, reading in part, as follows:

“Rosters will be revised and posted in January of each year, and will be open to protest for a period of sixty (60) days from date of posting.”
The seniority list as of January 1, 1935, shows:

Drew Cox, September 8, 1929.

H. A. Ziegler, September 30, 1929.

and on January 19, 1935, when Mr. Cox requested permission to displace Mr. Ziegler, their seniority standing was, according to roster, as above stated.

On January 19, 1935, Mr. Ziegler protested his seniority date of September 30, 1929, as being in error, and on March 13, 1935, the carrier issued a revised seniority roster showing Mr. Ziegler's date (group 2) as of September 4, 1925.

Mr. Ziegler was laid off, under force reduction, in October 1926, and was returned to service August 9, 1929, and there is no conclusive evidence that he protected his seniority, under the provisions of Rule 20, during such absence from service. He has, however, been continuously employed since August 9, 1929 (except for the period August 25 to September 30, 1929), and his correct seniority date is, therefore, August 9, 1929.

Protest of the seniority date of September 30, 1929, which date was given to Mr. Ziegler on the seniority list of January 1, 1935, having not been made until requested displacement by Mr. Cox (January 19th, 1935), it is found that Mr. Cox on that date, and based upon the seniority roster published as of January 1st, 1935, was entitled to displace Mr. Ziegler, although Mr. Ziegler's seniority status should now be corrected in conformity with these findings.

AWARD

Based on Seniority Roster as of January 1st, 1935, the claim of Drew Cox for pay for January 19th and 20th, 1935, is sustained.

Mr. Ziegler shall be given seniority date of August 9th, 1929, in Group 2 service.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 30th day of August 1935.