

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuel, Referee

**PARTIES TO DISPUTE:**

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

**NORTHERN PACIFIC RAILWAY COMPANY**

**DISPUTE.**—"Claim of E. G. Widger dated April 4, 1933, that he be permitted to exercise his seniority onto position of car distributor at Spokane, Washington, held by Harvey McKeown who has less seniority on the Clerks' roster, and that he be reimbursed for any monetary loss sustained because of not being permitted to so exercise his seniority."

**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.

This dispute being deadlocked, Paul Samuel was called in as Referee to sit with this Division.

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

"The Division offices of the Idaho Division are located at Spokane. A car distributor's office is a part of the Division office organization. Two car distributors are employed on that Division, one handling car-distribution work for the territory east of Cheney and the other handling car-distribution work for the territory west of Cheney. (Cheney is 16 miles west of Spokane.) These car distributors work independently. Mr. Harvey McKeown occupied the position handling the car-distribution work west of Cheney.

"Mr. Widger was occupying the position of relief clerk in the Spokane yards relieving various employees on their day off per week. He was displaced from this position by a senior employee, and requested permission to exercise his seniority onto the position of car distributor which was occupied by Mr. McKeown. He was not permitted to displace Mr. McKeown."

An Agreement bearing effective date of August 15, 1922, exists between the parties, and the employees cite the following rules thereof in support of their claim:

**RULE 5 (a). Promotion basis.**—Employees covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness, and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this provision shall not apply to the excepted positions.

**NOTE.**—The word "sufficient" is intended to more clearly establish the right of the senior clerk or employee to bid in a new position or vacancy where two or more employees have adequate fitness and ability.

**RULE 7. New positions and vacancies.**—Seniority rights of employees to vacancies or new positions will be governed by these rules.

**RULE 26. Positions abolished.**—Employees whose positions are abolished may exercise their seniority rights over junior employees. Other employees affected may exercise seniority rights in the same manner.

**RULE 30. Exercising seniority.**—The exercise of seniority in reductions of force or displacing junior employees provided for in this article is subject to the provisions of Rule 5 of this article.

Under the rules and in the first instance, the carrier has the responsibility of determining the fitness and ability of the employees, and this Division should be reluctant to interfere with the decision so made by the carrier so long

as it acts in good faith, is without bias or prejudice and indicates no disposition to purposely or carelessly evade or disrespect the rules as well as the spirit and intention thereof.

The record in this case discloses that the position of Car Distributor carries with it much responsibility. The position requires training, experience, and judgment. The ordinary Yard Clerk could not under ordinary circumstances take up the work and carry on its multiplied responsible duties. The petitioner is without substantial experience in handling this particular line of work and has been in no position to study its varied details or become acquainted with the entire territory which this position services although a thorough knowledge of such territory and its requirements as well as peculiarities are quite essential to the successful operation of the work of Car Distributor. The present incumbent has satisfactorily filled the position since April 1926 although he is junior in service to the petitioner, and while it is true that the seniority rule is one of the major elements in the application of the rules between the carrier and the employees, yet seniority cannot be applied in every case and do justice to the successful operation of the Railroad. Seniority cannot be applied irrespective of fitness and ability. The latter elements are of very great importance to the carrier. In this particular case or dispute this Division is of the opinion that the carrier was justified in making the decision that the petitioner did not possess sufficient fitness and ability to perform the duties of the position of Car Distributor.

#### 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 September 1935.