

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

PARTIES TO DISPUTE:

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

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY

DISPUTE.—"Shall Mr. W. W. Ramsey, the senior applicant, be assigned to position of 22nd Temporary Clerk, office of Auditor Freight Traffic, Chicago, and compensated for monetary loss sustained, account failure to assign him to such position on January 12, 1931?"

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 employee 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.

As of January 8, 1928, there was created in the office of Auditor Freight Traffic at Chicago a position designated as "22nd Temporary Clerk" and a qualified employee assigned thereto.

It is represented that said position was not expected to continue for more than thirty days, but it is shown that the said position designated "22nd Temporary Clerk" did in fact continue until December 6, 1932.

Under date of March 20, 1928, there was posted, for the information of employees concerned, Bulletin #64, over the signature of Auditor Freight Traffic inviting applications to fill vacancy (as of March 23, 1928) on the said position of "22nd Temporary Clerk"; and under date of March 26, 1928, "Notice of Appointment" was posted over the signature of Auditor Freight Traffic appointing Clerk L. Furry thereto, effective April 1, 1928.

Subsequent thereto there were seven additional bulletins posted at various intervals over the signature of Auditor Freight Traffic inviting applications to fill vacancies purported to exist on the said temporary position.

Under the terms of one or another of said seven subsequent bulletins it is shown that Employee Clark secured assignment to the position from December 20, 1928, to October 9, 1929, and from November 3, 1930, to May 26, 1932, on which latter date he was displaced by complainant, Employee Ramsey, in the exercise of seniority under a Force Reduction; that under the terms of one or another of said seven subsequent bulletins Employee Styles secured assignment to the position from October 9, 1929, to November 3, 1930.

The last of the said seven additional bulletins was #11 issued over the signature of Auditor Freight Traffic dated January 12, 1931, declaring a vacancy to exist on said position of "22nd Temporary Clerk", as of January 5, 1931, and inviting applications for assignment thereto, which bulletin among other things stated:

"Temporarily filled at present—this is an extension to April 9, 1931", and the instant dispute grew out of the failure to assign Employee Ramsey to the position under the described Bulletin #11.

As of the date (January 12, 1931) that said Bulletin #11 was posted Employee Clark occupied the position in question continuously from November 3, 1930, and he (Clark) and complainant, Employee Ramsey, filed applications under the provisions of said Bulletin #11.

The application of Clark (seniority date February 23, 1928) was accepted, and the application of Ramsey (seniority date October 11, 1927) was rejected, although as heretofore shown Employee Ramsey was later (on May 26, 1932) permitted to displace Clark in the exercise of seniority under a Force Reduction.

There is no dispute in respect of relative seniority status of Employees Clark and Ramsey, but the application of Employee Ramsey under provisions of Bulletin #11 was rejected on the grounds "that conditions warrant giving preference to the experienced clerk", together with what the employing officer stated to be appropriate reasons for the quoted conclusion. Subsequently the carrier declined to act favorably upon an appeal made on behalf of Employee Ramsey on the additional grounds that Bulletin #11 as well as all of the six other bulletins issued between #64 and #11 (being in the order named—Numbers 387, 94, 329, 16, 150, and 207) had been erroneously issued in that rules of agreement between the parties did not contemplate nor require that a temporary position of the character described be bulletined more than once after the lapse of thirty days following the creation of such temporary position.

An agreement bearing effective date January 1, 1931, governing the Wages and Working Conditions of employees therein designated is shown to exist between the parties, from which Agreement petitioner cites and relies upon Rules 7 and 23; and the carrier cites and relies upon Rule 19, as follows:

"**RULE 7. 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 employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability."

"**RULE 23. Time in Which to Qualify.**—Employees entitled to bulletined positions will be allowed thirty (30) days in which to qualify and, failing, shall retain all their seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employee. When it is definitely determined an employe will not qualify for position he may be removed before expiration of thirty (30) days. An employe who fails to qualify on a temporary vacancy may immediately return to his regular position, per Rule 37."

"**RULE 19. Short Vacancies.**—Positions or vacancies of thirty days, or less, duration, shall be considered temporary, and may be filled without bulletining. However, when found vacancy will extend beyond thirty-day limit, same shall be immediately bulletined, showing, if practicable, expected duration of vacancy.

"**Interpretation.**—New employes filling positions or vacancies under this rule will not be considered as establishing seniority under Rule 3."

The record is not sufficiently clear to determine whether the position known as "22nd Temporary Clerk" continued in existence during the entire period, January 8, 1928 to the date of posting Bulletin #11, January 12, 1931, and during which period said position was bulletined and/or re-bulletined eight different times. If the position continued in existence during such period of time and was not in fact vacated after initial assignment, it is the judgment of the Third Division that the Auditor Freight Traffic erred in declaring any vacancy thereon after the initial assignment under the provisions of Bulletin #64. This pronouncement, however, is not to be construed as an interpretation of Rule 19, upon which the parties are free to negotiate.

It being shown, however, that if there was such error the same was repeated in the posting of seven different bulletins dating from December 19, 1928, to and including January 12, 1931, equally affecting the rights of all employees involved, it is the further judgment of this Third Division that the seniority rights of W. W. Ramsey were not impaired by the issuance of Bulletin #11 dated January 12, 1931.

The evidence is not conclusive upon which to hold Employee Ramsey was not qualified to fill the position of "22nd Temporary Clerk" in office of Auditor Freight Traffic beginning January 12, 1931.

AWARD

Employee Ramsey shall be reimbursed in an amount equal to the difference between what he shall have earned in other employment and that which

he would have earned on position of "22nd Temporary Clerk" in the period January 22, 1931 to May 26, 1932, both inclusive.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary

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