

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

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

DISPUTE.—

"Claim of Joseph G. Girardin Clerk, Mechanical Department, for pay as Clerk at Lawrence Engine House, six days a week, June 26 to July 28, 1935; namely, June 26, 27, 28, 30, July 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 1935—28 days at \$4.30 a day, or \$114.40."

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 employe 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 parties have jointly certified the following statement of facts, and the Third Division so finds:

"Girardin was a regular assigned employe holding position of Clerk at Lawrence, Mass., Engine House, which position paid \$4.30 per day. Assignment was for six days per week.

"He was displaced by T. J. White, a senior clerk, who took the position commencing June 26, 1935. White had not been working for several weeks account of being suspended.

"White had held an excepted position for many years as Chief Clerk to Master Mechanic. His name had appeared on roster with seniority date of June 24, 1906. Girardin on same roster with seniority date of March 10, 1927.

"Girardin was restored to position of clerk at Lawrence Engine House on July 29, 1935, and White went on the Spare List."

There is in evidence an agreement between the parties bearing effective date of July 15, 1925, and the petitioner cites Rules 12 and 21 in support of Claim, reading:

RULE 12

*"Failure to Qualify.—*Employes awarded bulletined positions shall 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 employe."

RULE 21

*"Promotion to Excepted Positions.—*Employes now filling or promoted to excepted or official positions shall retain all their rights and continue to accumulate seniority in the district from which promoted. When excepted or official positions are filled by other than employes covered by these rules, no seniority rights shall be established by such employment."

The employes contend that White, Chief Clerk to Master Mechanic, was suspended for cause. After about five weeks he was restored to service by the General Superintendent Motive Power, but with the proviso that he could not return to his former position as Chief Clerk at the New Terminal, Boston, but could displace anyone his junior at that point, except at the New Terminal. Upon his restoration to service, under bar from positions at the New Terminal, White was in the state of an employe disqualified and subject to placement on a position only as provided in Rule 12.

It is the contention of the management that the terms of Rule 21 apply; that White held the position of Chief Clerk to Master Mechanic, an excepted position, for several years; that having been promoted from a classified position he continued to accumulate seniority on the clerks' roster, upon which he was continuously carried; and that under the terms of Rule 21 he had the right to displace a junior clerk in the classified service when he ceased to hold the excepted position.

This division further finds that in another case, similar in some of its aspects, the Assistant General Manager addressed a letter to General Superintendent of Motive Power disposing of the case then in question in the following terms:

"The job of Chief Clerk at Billerica was an excepted position. Under Rule 21 the incumbents of excepted positions when promoted from clerical ranks continue to accumulate seniority and may exercise their seniority rights, but they have no more rights than those not filling excepted positions, and under Rule 12, when a clerk is disqualified he is not permitted to displace any regular assigned clerk, but goes to the foot of the list, so that Mr. Tebeau had no right to move to a preference job either because he was formerly on it or because the rate was higher than some of the others."

which, as contended by the petitioner, establishes an interpretation of the rule for this particular carrier that is deemed by this Division to be applicable in the instant case.

The carrier also states in its submission:

"Girardin was restored to the job July 29, but it was not done because we admitted any error had been made, but solely to avoid possible payment of a large amount of money for *no* service in event the Adjustment Board should find against the carrier."

The action of the carrier permitting Girardin to return to his position was consistent with the principle enunciated by the letter, in part, quoted above. Hence:

AWARD

The claim is sustained.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this Nineteenth day of February 1936.