

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK CENTRAL RAILROAD—BUFFALO AND EAST

DISPUTE.—

“Claim that seniority dating of Mrs. B. Warry, clerk at Black Rock, N. Y., is December 16, 1931, for the Combined Freight Stations roster of Buffalo District, and December 9, 1930, for Black Rock Freight Station proper, and that roster should be corrected to so indicate.”

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

The Carrier and the Employee 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 a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

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

“In April 1924 position of clerk was established at Black Rock freight station to handle milling in transit work. This position was under the jurisdiction of the New York Central but carried on Michigan Central Railroad payrolls and the salary was paid by them.

“Miss M. Gill, carried on the New York Central Black Rock freight station roster with seniority dating of October 14, 1922, was first assigned to the position and remained on it until December 1924, when she resigned.

“Miss M. Brainard, also carried on the New York Central Black Rock freight station roster with seniority dating of July 28, 1922, was next assigned to the position on January 8, 1925, and remained on it until December 1930, when she resigned.

“Both the Misses Gill and Brainard were carried on seniority rosters covering New York Central Black Rock freight office employees during their entire period of service with the New York Central Railroad at Black Rock freight station.

“Effective September 15, 1930, the seniority rosters of Black Rock, Erie Street, Ohio Street, Carroll Street, and Louisiana Street (Buffalo) freight stations and Central Billing Bureau (Buffalo) were combined, forming a combined freight station seniority roster.

“The position in question was bulletined under date of December 1, 1930, to employees at Black Rock freight station. Mrs. B. Warry, carried on the combined freight station seniority roster (formerly on New York Central Black Rock freight station roster) with seniority dating of May 17, 1923, was assigned to the position by bulletin issued under date of December 8, 1930.

“Effective December 16, 1931, several Michigan Central positions at Black Rock yard, carried on separate seniority roster, were consolidated with the Black Rock freight station force. Instructions were issued on December 19, 1931 (Exhibit A), giving the incumbents of these positions seniority dating of December 16, 1931, on the combined station roster, with their original seniority dating at

Black Rock freight station proper. Mrs. Warry was included with these employees and promptly protested the datings given her. On December 21, 1931, further instructions (Exhibit B) were issued, giving Mrs. Warry her original seniority dating of May 17, 1923, on the combined freight station seniority roster." There is in evidence an agreement between the parties bearing effective date of September 1, 1922, and Rules 15 and 17 have been cited, reading:

RULE 15

"A roster of all employees in each seniority district, by classes as specified in Rule 1 of this agreement, showing name, occupation, location, date of entry, in the service, and proper seniority dating will be posted in agreed upon places. The rosters will be revised and posted prior to July 1st of each year. Upon presentation of proof of error by an employee or his representative, such error will be corrected and bulletined.

"This rule will not apply to freight handlers or laborers until they have been in service six months.

"If the date shown is not protested within sixty (60) days after second posting, it will be considered the established date. This will not operate to deprive employees of rights given them by Rules 17, 18, and 20.

"The accredited representative of the employees in each district shall be furnished with a copy of the roster covering that district."

RULE 17

"Employees transferring or bidding into one class from the other or transferring with their positions from one seniority roster to another, shall rank from date of transfer on roster to which transferred and shall continue to accumulate seniority for displacement purposes on roster from which transferred."

Section 6 of the Mediation Agreement of 1928, between the parties, reads:

"Where division seniority is in effect on the absorbing line, the division seniority of employees from other system lines taken over in the consolidation will begin from the date they enter the consolidated office."

While the evidence is not altogether clear, the indications of what happened are as follows:

When Miss Brainard resigned, giving rise to the vacancy in question, the representative of the employees asked the Freight Agent to change the position from one paid by the Michigan Central to one paid by the New York Central and included in the New York Central rules agreement. This the Agent declined to do, and the representative then asked him to advise New York Central applicants for the position that anyone accepting the position would relinquish seniority in the New York Central roster. There is in evidence a letter from the representative to the Superintendent at Buffalo, dated December 27, 1931, referring to these understandings, and protesting the change in Mrs. Warry's seniority rating on the combined roster from December 9, 1930, to May 17, 1923.

There is some evidence to the effect that Mrs. Warry was informed that in accepting the position, her seniority would be affected accordingly, and that other employees in the office also knew this. It would seem that the Agent must have contemplated this result because he bulletined the vacancy only at the Black Rock station and only to the Black Rock employees, whereas all bulletins for New York Central positions after the creation of the combined roster had, in accordance with the instructions of the Carrier, been posted by the Superintendent at all points. It is argued that the Agent was in error, but the fact remains that he did what he did, and what he did is evidence of what he thought. The bulletin he posted stated that the salary was to be paid by the Michigan Central, and on December 19, 1931, the Superintendent at Buffalo issued a roster listing those who were Michigan Central employees on December 16, 1931, at the time of the consolidation of the Michigan Central forces with the New York Central forces, and whose seniority, therefore, dated from December 16, 1931. Mrs. Warry's name was included among these employees, and the Superintendent's information must have been obtained from the Black Rock office. The Carrier asserts that the roster was erroneous, and it was,

in fact, corrected at Mrs. Warry's instance, but its issuance is further evidence of the way in which the position seems to have been regarded in the Black Rock office.

No result in this case can be fair to everyone. If the claim is sustained, Mrs. Warry's position will be prejudiced, but if the claim is denied, then the method of bulletining the job at the Black Rock office only, will have prejudiced the rights of employees at other points by excluding them from knowledge of the position and from any opportunity to bid. And it is possible that between December 9, 1930, and December 21, 1931, had Mrs. Warry been recognized and known as a New York Central employee, she might have been displaced by other New York Central employees with longer seniority in such job contractions as took place during that period.

Upon weighing all of these considerations, we think that the claim should be sustained.

AWARD

Claim sustained.

By Order of Third Division :

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest :

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 13th day of March 1936.