

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD STATION EMPLOYEES
BOSTON AND MAINE RAILROAD

DISPUTE:—

"Returning Ralph C. Putnam, with pay, to position as crossing tender at Devereux, from which position Mr. Putnam was improperly displaced August 16, 1935."

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.

In May 1935, a position of crossing tender at Devereux, Mass., became vacant and, in the absence of spare or extra crossing tenders, R. C. Putnam, employed as caretaker at Clifton, Mass., was, on May 28, 1935, temporarily placed on the position at Devereux.

The vacancy at Devereux was bulletined and, as no bids were received, Putnam was permitted to continue on the position temporarily and pending permanent assignment of the position by the carrier.

On August 16, 1935, G. H. Moore, in the employ of the carrier since 1899, but who had not been regularly employed since January 1, 1934, on account of his health, was permanently assigned to the position of crossing tender at Devereux, under the provisions of Rule 10 (i).

There is in evidence an agreement between the parties, effective August 16, 1927, and "Understanding" in connection with Rule 10 (i), effective June 21, 1934.

The petitioner cites and relies upon the following in support of claim.

"Understanding", effective June 21, 1934:

1. Injured or incapacitated employees—or employees unfitted for other railroad service will not be permitted to displace crossing tenders having continuous service with railroad as noted below:

Terminal Division.—District No. 3, eleven years (11) or more.

6. Incapacitated or injured employees or employees unfitted for other railroad service placed in accord with Rule 10 Sec. (i) will be allowed to displace only on eight-hour positions six or seven days per week or on part time positions that were in effect prior to Supplement No. 8 to General Order No. 27 or part time positions created under the provisions of Supplement No. 8 to General Order No. 27, and when placed will be considered permanently placed—shall not have bidding or displacing rights.

Said employees, however, may file their names and addresses with Superintendent of their division, if interested in a transfer to another crossing, but transfer to another crossing can only take place when a vacancy is properly posted and not bid off by a crossing tender having bidding and displacing rights.

RULE 12

(Effective August 16, 1927)

VACANCIES POSTED

“(a) * * *

“(b) (Second paragraph): Positions or vacancies of thirty (30) days or less duration shall be considered temporary and may be filled without bulletining. Positions or vacancies known to be for more than thirty (30) days' duration will be bulletined and filled in accordance with these rules.”

The carrier represents that, under the provisions of Rule 10 (i), Putnam occupied the position of crossing tender at Clifton, Mass., from November 1927 to April 1929, when automatic crossing protection was installed. From April 1929 to May 27, 1935, he was employed as caretaker at Clifton, a position not covered by the agreement.

After Putnam ceased to work as crossing tender at Clifton, he failed to protect his seniority and he had no greater right to a position of crossing tender than any other incapacitated employee. His temporary employment at Devereux did not restore his former rights.

The vacancy at Devereux was bulletined, no bids were received and G. H. Moore, senior to Putnam, was permanently assigned to the position in accordance with the provisions of the agreement.

The Third Division finds that Putnam was employed from April 1929 to May 27, 1935, as caretaker at Clifton, Mass., a position not covered by the agreement between the parties, that he failed to protect his seniority and he had no bidding or displacing rights as a crossing tender.

The carrier was privileged to use Putnam temporarily as crossing tender at Devereux, Mass., and to permanently assign Moore to said position under the provisions of the agreement between the parties.

AWARD

Claim is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 1st day of May 1936.