Award Number 256
Docket Number CL–277

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

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

THE MIDLAND VALLEY RAILROAD COMPANY

DISPUTE.—

"Claim of Claude Beard, clerk, Muskogee, Oklahoma, for:

"(a) Restoration of his original seniority date of March 2, 1929, account improper removal of his name from the January 1934 and subsequent Clerks' Seniority Rosters.

"(b) Wage loss sustained October 17, 1933, to October 24, 1933, inclusive, account not being permitted to exercise his seniority rights on position of 'Cotton Checker', Muskogee, Oklahoma, held by junior employe Mr. J. C. Hannah.

"(c) Position of 'Clerk', Muskogee, Oklahoma, rate $4.07 per day effective December 6, 1933, and for retroactive compensation for wage loss sustained as a result of not being permitted to exercise seniority rights over Junior employe J. G. Hannah."

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

The carrier and the employes involved in this dispute are respectively carrier and employes 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.

During the years 1931, 1932, and 1933, the name of clerk Claude Beard appeared on the January and July seniority rosters of clerical forces at Muskogee Station and Yards, with a seniority date of March 2, 1929, upon which date he entered service of the Carrier.

On October 17, 1933, a temporary position of Cotton Checker was established at the Local Freight Office, and a former agent, Mr. J. G. Hannah, was temporarily assigned to the position. Mr. Beard, who held no regular assigned position, but who was working extra, applied for this position in the usual manner, but was not permitted to assume the position, and a protest was filed in his behalf.

Shortly thereafter, the position of Cotton Checker, and also a newly created temporary position of Clerk were bulletined. Both of these positions were assigned by bulletin on November 1, 1933. Pending the assignment, Mr. Hannah was temporarily assigned to the Clerk position, and Mr. Beard was permitted to commence work on the Cotton Checker position, succeeding Mr. Hannah. Subsequently, the position of Cotton Checker was assigned to Mr. D. O. Mikels, a clerk senior to Mr. Beard, but Mr. Mikels did not assume the position to which assigned due to the fact that he preferred to remain in the Yard Office in extra service, and Mr. Beard remained on the position of Cotton Checker until December 5, 1933, on which date that position was abolished.

On December 6, 1933, Mr. Beard made application to displace Mr. Hannah from the Clerk position to which Hannah had been assigned by bulletin. Clerk Beard was denied the right to displace Mr. Hannah on the allegation that he (Beard) had not protected his seniority rights, subsequent to May 6, 1931, as provided for in Rule 14 of the agreement, and that therefore, his correct seniority date was as of October 24, 1933, the date on which he commenced work on the Cotton Checker position. Protest was promptly filed by the petitioner,

to the effect that Mr. Beard had protected his seniority as contemplated in the agreement. Several months later, after the matter had been in controversy involving Mr. Beard's correct seniority dating, the Carrier raised the question of Mr. Beard not having sufficient fitness and ability to handle the duties and responsibilities of said position.

There is in evidence an agreement between the parties bearing effective date of June 14, 1921, and Rules 4 and 14 thereof have been cited, reading:

RULE 4

"*Seniority Basis.*—Employes may exercise their seniority rights when vacancies occur, new positions are created, their positions abolished, or they are displaced by senior employes. These moves to be based on seniority fitness, and ability; fitness and ability being sufficient, seniority shall prevail, the highest officer in the department to be the judge."

RULE 14

"*Reducing Forces.*—Employes cut off account reduction in force may retain their seniority rights by filing their addresses with the proper official every thirty (30) days and advising promptly of any change of address. When notified to return to work, they shall be given seven days advance notice by mail or telegram sent to last address given, and if upon proper notice fail to return within three days and failing to give satisfactory reason for not so doing, will be considered out of the service. Such employes when available, shall be given preference to all extra work."

The petitioner contends that Mr. Beard adequately complied with the provisions of Rule 14 when he was cut off due to force reductions, May 6, 1931, and subsequent thereto; that his name was arbitrarily removed from the Clerks' seniority roster by the Carrier without justification; that the Carrier at all times subsequent to May 6, 1931, had knowledge of the address of Mr. Beard, and that such address was on file in accordance with the customary and accepted practice in the Muskogee Yard Office; that under the provisions of Rule 4 and the last sentence of Rule 14, Mr. Beard should have been permitted to work the temporary position of Cotton Checker from October 17 to October 24, inclusive, 1933, during which time this position was occupied by J. G. Hannah, and that Mr. Beard should be compensated for monetary loss sustained for that period.

The petitioner also contends that Mr. Beard has been improperly deprived of his original seniority date of March 2, 1929; that he should have been permitted to displace junior employe Hannah from the position of Clerk, rate $4.07 per day, on December 6, 1933, and compensated for wage loss sustained because of the action of the Carrier in denying him permission to exercise his proper seniority rights.

The petitioner further contends that Mr. Beard was denied the job of Clerk held by Hannah, rate $4.07 per day, on December 6, 1933, because of the position taken by the Carrier that he had forfeited his seniority on account of noncompliance with Rule 14; that clerk Beard was not denied this position because of any lack of fitness and ability; that this contention was raised by the Carrier several months later.

The Carrier contends that clerk Beard, employed as Yard Clerk at Muskogee Yard, was cut off account of reduction in forces May 6, 1931, and under claim (a) the only question is whether or not Beard filed his address with the proper official every thirty (30) days and advised promptly of any change in address. The Carrier claims that he did not do this, and therefore did not retain his seniority rights.

Under claim (b), the Carrier contends that on September 16, 1933, a temporary position of Cotton Checker was established at Muskogee Station. Its duration was uncertain as it was dependent on the movement of cotton. Therefore, under Rule 8 (f), pending bulletin, it was temporarily assigned to Mr. J. G. Hannah, formerly Assistant Agent; that the position was bulletined October 24; that at the same time, a vacancy as Clerk at Muskogee Station was also bulletined; that there were two bidders on each position—D. O. Mikels bid first choice—Clerk, second choice—Cotton Checker, Claude Beard bid first choice—Cotton Checker, and second choice—Clerk; that clerk Mikels did not have the fitness and ability to handle the Clerk position and was, therefore,

assigned to the position of his second choice, that of Cotton Checker; that he (Mikels) declined to take this position, thus leaving it available for Beard, who was immediately assigned, effective October 24, 1933.

The Carrier also contends that a few days previously, October 19, Beard called at the General Manager's office, and expressed verbally a desire to bump J. G. Hannah on the Cotton Checker position; that since he had not complied with Rule 14, he was told that he did not have seniority; furthermore, even if he had retained his seniority, he could only have exercised it in accordance with Rule 4, under which the right to bump could only have been exercised when his own position was abolished two and one-half years previously; that even when the Cotton Checker position was bulletined, Beard could have had no right to it until after Mikels declined to accept it, and that therefore his claim should be denied because he failed to retain his seniority by not complying with Rule 14, and for the further reason that, if he had had seniority, he could not, under Rule 4, have exercised it on October 17, to displace Hannah.

Under claim (c), the Carrier contends that it declined to allow Beard to displace Hannah for two reasons:

1. Beard, having failed to retain his seniority by complying with Rule 14, after having been cut off May 6, 1931, did not have seniority over Hannah, and, therefore, could not displace him.

2. Beard did not have the fitness and ability to handle the position of Clerk at Muskogee Station.

Based upon the whole record, the Third Division finds

(a) That clerk Beard, while working extra after he was cut off account of force reduction, May 6, 1931, and under the practice in effect at Muskogee Yard Office, to all intent and purpose, complied with Rule 14 in filing his name and address;

(b) That having worked extra and retaining his seniority, he was entitled to position of Cotton Checker from October 17 to October 24, 1933;

(c) That under all the circumstances of this particular case, clerk Beard should be awarded position in question, effective May 20, 1936, and given a fair and impartial trial under the provisions of Rule 7, but compensation for time lost is denied.

AWARD

(a) Sustained.
(b) Sustained.
(c) Sustained to extent of finding last above.

By Order of Third Division.

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary.*

Dated at Chicago, Illinois, this 8th day of May 1936.