

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
FORT WORTH AND DENVER CITY RAILWAY COMPANY**

DISPUTE.—

"Request of R. E. Steele that his Clerk seniority date should be June 16, 1920."

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.

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

"On current seniority rosters the name of Mr. Steele is carried, as a trucker with date of January 15, 1920, and as a clerk with date of September 5, 1924."

There is in evidence an agreement between the parties bearing effective date of December 1, 1924, and Rules 2, 3, 6, and 16 thereof have been cited, reading:

RULE 2

"(a) *Clerical Workers.*—Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports, and statements, handling of correspondence and similar work.

"(b) *Machine Operators.*—Employees who regularly devote not less than four (4) hours per day to the operation of office or station mechanical equipment requiring special skill and training—such as typewriters, calculating machines, bookkeeping machines, dictaphones, and other similar equipment.

"The foregoing definitions, paragraphs (a) and (b), shall not be construed to apply to:

"(1) Employees engaged in assorting tickets, waybills, et cetera, nor to employees operating office or station appliances or devices not requiring special skill or training such as those for duplicating letters and statements, perforating papers, addressing envelopes, numbering claims and other papers, adjusting dictaphone cylinders and work of like nature; nor to employees gathering mail or other similar work not requiring clerical ability.

"(2) Office boys, messengers, and chore boys; or to other employees doing similar work.

"(3) Students and apprentices qualifying for specific clerical work or as machine operators.

"(4) Employees performing manual work not requiring clerical ability."

RULE 3

"Seniority Datum.—(a) Seniority begins at the time the employee's pay starts on the seniority district and in the seniority class to which assigned, and will apply in filling new positions or vacancies, and in the reduction of forces. This is not to conflict with Rule 4.

"(b) Where two or more employees enter upon their duties at the same hour on the same day, employing officer shall at that time designate respective seniority rank of such employees."

RULE 6

"Seniority Classes.—Seniority is restricted to the three groups of employees mentioned in Rule 1 of this agreement, as follows:

"Groups 1 and 2 shall constitute one seniority class (except elevator operators, office and station watchmen and janitors). Group 3 (including elevator operators, office and station watchmen and janitors), will be considered a separate seniority class.

"An employee in Group 3, with six months service, if used temporarily service, when recommended by his Superintendent or head of department, without right of appeal by employee, shall have opportunity to bid on vacancies in positions falling in Groups 1 and 2, using his seniority date as a Group 3 employee but taking seniority as an employee in Groups 1 and 2 from the date of acceptance of a position in Group 1 or Group 2.

"An employee in Group 3, with six months' service, if used temporarily on relief work in a position in Group 1 or Group 2 a total of sixty full days (not necessarily consecutive) will be given date on the proper roster of Groups 1 and 2 as of date of completion of sixty days (which seniority date as an employee in Group 1 or Group 2 may only be retained on condition that he bids for and accepts the first vacancy in Group 1 or Group 2 for which qualified under Rules 4 and 8) and will continue to accumulate seniority on the list from which promoted.

"When force is reduced employee will exercise seniority under the rules of this agreement first on the roster of employees in Groups 1 and 2, subject to the qualifications of Rule 4, but if forced off of the roster of employees in Groups 1 and 2 he may within five days resume date on seniority list from which promoted to roster of employees in Groups 1 and 2 and exercise seniority thereon, retaining his seniority in Groups 1 and 2.

"Such seniority as an employee in Groups 1 and 2 may be retained only on the condition that he returns to a position in Group 1 or Group 2 whenever force is increased or he bids for and accepts the first vacancy in Group 1 or 2 for which qualified under Rules 4 and 8."

RULE 16

"Roster.—A seniority roster of all employees in each established seniority district and of the classes of employees, showing name and proper date, will be posted in designated places accessible to all of the employees affected. These rosters will be revised and posted in January and July of each year and will be open to protest for a period of sixty days from date of posting. Upon presentation of proof of error by employee or his representative, such error will be corrected. The duly accredited representative of the employee shall be furnished with copy of roster. If a seniority roster is revised or rewritten at any other time than in January or July, because of reduction in force or due to turnover in force, the duly authorized representative will be given a copy thereof upon request.

"The names of laborers will not be included on their respective seniority rosters and their seniority rights will not apply until they have been in continuous service of these Railways for six months."

In addition thereto, the Carrier cites the following rules of previous agreements between the parties, beginning with the effective date of the National Agreement, January 1, 1920, reading:

"1920—National Agreement—Rule No. 1. These rules shall govern the hours of service and working conditions of the following employees on railroads in Federal operation, subject to the exceptions noted below:

"(1) Clerks,

"(2) Other office and station employees, such as office boys, messengers, chore boys, train announcers, gatemen, checkers, baggage and parcel room employees, train and engine crew callers, operators of office or station equipment devices, telephone switchboard operators, elevator operators, office, station, and warehouse watchmen, and janitors.

"(3) Laborers employed in and around stations, storehouses, and warehouses.

"Exceptions: * * *

"1920 National Agreement—Rule 4. Employees who regularly devote not less than four hours per day to the writing and calculating incident to keeping records and accounts, writing and transcribing letters, bills, reports, statements and similar work, and to the operation of office mechanical equipment and devices in connection with such duties and work shall be designated as clerks. The above definition shall not be construed to apply to:

"1. Employees engaged in assorting tickets, waybills, etc., nor to employees operating appliances or machines for perforating and addressing envelopes, numbering claims or other papers, adjusting dictaphone cylinders and work of a like nature; nor to employees gathering or delivering mail or other similar work not requiring clerical ability.

"2. Office boys, messengers, and chore boys; or to other employees doing similar work.

"3. Employees performing manual work not requiring clerical ability."

"1920—National Agreement—Rule No. 5. Seniority begins at the time the employee's pay starts."

"1920—National Agreement—Rule No. 22. A seniority roster of all employees in each seniority district, showing name and proper dating will be posted in agreed upon places accessible to all employees affected. The rosters will be revised and posted in January of each year, and will be open to protest for a period of sixty (60) days from date of posting. Upon presentation of proof of error by an employee or his representative, such error will be corrected. The duly accredited representative of the employee shall be furnished with a copy of the roster upon request.

"The provisions for annual revision and posting of seniority rosters will not be construed to mean that the duly authorized representative of the employees will be denied the right to request and receive a revised roster, when a reduction in force is contemplated or when due to turnover in force, the annual roster (as applied to a seniority district) does not furnish the information necessary to apply properly the seniority provisions of this schedule.

"NOTE.—In view of the variety of employees covered by these rules, seniority rosters by classes, to be mutually agreed upon by the management and the duly accredited representatives of the employees shall be established."

"1920—National Agreement—Rule No. 23. Seniority rosters will show the name and date of entry of the employees into the service of the railroad, except that names of laborers will not be included and their seniority rights will not apply until they have been in continuous service of the railroad in excess of six (6) months."

"1922—Agreement—Article I, Section 1. The following rules constitute an agreement between Fort Worth and Denver City Railway Company * * * and that class of employees represented by Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, and shall govern the hours of service and working conditions of the following named classes of employees * * *, subject to the exceptions named in Section 2 of this Article.

"(1) Clerks, as defined in Article II.

"(2) Other office and station employees, such as office boys, messengers, chore boys, train announcers, gatemen, baggage room employees, parcel-room employees, train and engine crew callers, operators of office or station equipment devices, telephone switchboard operators, elevator operators, office and station watchmen, and janitors.

"(3) Laborers employed in and around stations, storehouses, and warehouses.

"Exceptions: * * *"

"1922—Agreement—Article II. (a) *Clerical Workers*.—Employees who regularly devote not less than four (4) hours per day to the writing and calculating incident to keeping records and accounts, rendition of bills, reports, and statements, handling of correspondence and similar work.

"(b) *Machine Operators*.—Employees who regularly devote not less than four (4) hours per day to the operation of office or station mechanical equipment requiring special skill and training—such as typewriters, calculating machines, bookkeeping machines, dictaphones and other similar equipment.

"The foregoing definitions, paragraphs (a) and (b), shall not be construed to apply to:

"(1) Employees engaged in assorting tickets, waybills, et cetera, nor to employees operating office or station appliances or devices not requiring special skill or training such as those for duplicating letters and statements, perforating papers, addressing envelopes, numbering claims and other papers, adjusting dictaphone cylinders, and work of like nature; nor to employees gathering mail or other similar work not requiring clerical ability.

"(2) Office boys, messengers and chore boys; or to other employees doing similar work.

"(3) Students and apprentices qualifying for specific clerical work or as machine operators.

"(4) Employees performing manual work not requiring clerical ability."

1922—Agreement—Article III, Section 1. "Seniority begins at the time the employee's pay starts, on the seniority district and in the seniority class to which assigned, * * *."

1922—Agreement—Article III, Section 13. "A seniority roster of all employees in each established seniority district and of the classes of employees, showing name and proper date, will be posted in designated places accessible to all of the employees affected. These rosters will be revised and posted in January and July of each year and will be open to protest for a period of sixty days from date of posting. Upon presentation of proof of error by employee or his representative, such error will be corrected. The duly accredited representative of the employees shall be furnished with copy of roster. If a seniority roster is revised or rewritten at any other time than in January or July, because of reduction in force or due to turn-over in force, the duly authorized representative will be given a copy thereof upon request.

"The names of laborers will not be included on their respective seniority rosters and their seniority rights will not apply until they have been in continuous service * * * for six months."

Petitioner contends that Mr. R. E. Steele first entered service of the company as tracker at Amarillo, Tex., January 15, 1920, and served in that capacity until June 16, 1920, when he was promoted to checking freight on a clerical position; that the records at Amarillo Station show that he worked the following number of days as Check Clerk during the year 1920: June 13, July 27, August 26, September 24, October 29, November 26, and December 26. The records also show that Mr. Steele continued to check freight throughout the year 1921 and up to October 1, 1922.

That the positions at Amarillo were then reclassified by understanding between the parties effective October 1, 1922, whereupon Mr. Steele was displaced from the regular checker position by a senior employee; that the records will show, however, that subsequent to October 1, 1922, he worked as Check Clerk as follows: December 1922, 3 days; January, 1923, 3 days; February, 1923, 3 days; August, 1923, 5½ days; September, 1923, 11 days; March, June, August, and September, 1924, 12, 23, 16, and 5 days respectively.

The petitioner also contends that Mr. Steele's name was carried on the Clerk's seniority rosters from the time of posting of first roster, March 1922, after his employment at Amarillo, up to and including the posting of the January 1, 1926 roster, with a Group 1 and 2 (clerical) seniority date of January 15, 1920; that the Carrier, in revising and posting the July 1, 1926, roster, erroneously and without authority changed Mr. Steele's seniority dating as a clerk to September 5, 1924.

The petitioner further contends that the provisions of Rule 6 of the December 1, 1924, agreement between the parties, upon which the carrier relies for its action in changing Mr. Steele's clerical seniority dating, is not retroactive in its application; that there was no such provision in the 1920 and 1922 agreements.

The carrier contends that claimant R. E. Steele was not a Clerk in 1920, and that when he did become a clerk, his seniority date of September 5, 1924, was definitely established on June 29, 1926, on which date he and others concerned were notified in writing; that the clerical dating of September 5, 1924, appeared on thirteen consecutive issues of the Clerks' roster, for a period of six years, before it was questioned or protested; that the date of September 5, 1924, is Steele's correct clerical seniority dating; that the position occupied by Mr. Steele prior thereto was treated as that of trucker in applying increases and decreases granted by decisions of the United States Railroad Labor Board during the years 1920, 1921 and 1922.

The Third Division finds that early in 1922, the matter of proper classification of freight house employees at Amarillo was the subject of correspondence between the parties, and which correspondence terminated with the Carrier's and petitioner's letters of September 23 and 25, 1922, respectively, with the following understanding:

"We now have authority to re-rate and classify the position at Amarillo Freight Station occupied by Mr. O. B. Brock from that of trucker to that of check clerk at rate of \$4.05 per day, effective October 1, 1922, and allow back time adjustments retroactive to February 1, 1922.

"On the assumption that there has been no break in the continuity of Brock's service since October 16, 1919, it will be satisfactory to show his seniority date as Clerk as October 16, 1919, this I believe is date that our Agent, Amarillo, advised that Brock started checking freight."

It is contended by the petitioner, not denied by the Carrier, and this Division further finds that, R. E. Steele occupied the position above described beginning with June 16, 1920, and at various times thereafter for extended periods, and under the terms of the agreement then in effect, R. E. Steele acquired a clerical seniority dating as of June 18, 1920.

AWARD

Request granted. Mr. R. E. Steele shall be given a seniority date as Clerk, as of June 16, 1920, and the rosters shall be corrected accordingly.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

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