

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

Robert G. Corwin, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES**
CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

DISPUTE.—

“Request of George Maples to displace Edna Conway as Ticket Seller at South St. Joseph, Missouri, and monetary loss sustained from May 6, 1935, account being denied this right.”

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 employees 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.

This dispute being deadlocked, Robert G. Corwin was appointed as Referee to sit with the Division as a member thereof.

FURTHER FINDINGS.—In reaching an award in this docket it is necessary to give consideration to the material facts in a chronological order.

On December 31, 1917, the C. B. & Q. Railroad Company discontinued the use of its South St. Joseph Station as a telegraph agency and removed all telegraph instruments therefrom. In September 1918, under Supplement 7 to General Order No. 27, the United States Railroad Administration recognized the position of ticket seller as one belonging to the Clerks under their agreements. Mrs. Edna Conway was employed at the South St. Joseph Station on October 9, 1918, to sell tickets, but she was given the title Assistant Agent. On the 21st of October, 1918, she was assigned to the position of Agent Operator and shortly subsequently her name appeared on the Telegrapher's roster, such positions being provided for in their schedule. As we understand the record there was no ticket seller position for that point included in the Clerk's schedule at that time. On December 16, 1922, the position held by Mrs. Conway was reclassified to that of ticket seller, that title correctly describing the duties she had always theretofore and always thereafter performed. Her job was then delegated to the Clerks' schedule, and her former pay on an hourly telegrapher's basis was changed to a newly established rate of \$3.92 a day as a clerk. Because her real duties had remained unchanged she was then given a date of October 9, 1918, on the Clerks' roster. Whether the Brotherhood agreed to that listing is not clear but the evidence tends to indicate that the change was made through negotiations. The Telegraphers negotiated a new schedule with the carrier, dated July 1, 1923, and the position of telegraph-operator at South St. Joseph was eliminated therein. As it does not include ticket sellers, the petitioner argues that the position did not come within the scope of that agreement. In 1927 the Clerks secured an increase of pay of 18 cents a day from the management and Mrs. Conway's wages were increased to that extent. During all this time and until 1932 her name, with the same dating, appeared on both rosters, although everything would indicate that it should have been on the Clerks' alone. When the rosters for 1932 were being prepared, for some unexplained and almost inexplicable reason, the management left her name off the Clerks' roster and on that of the Telegraphers. It is stated that such was her preference but that, it is conceded, cannot excuse the carrier. Such was the situation up to January 1935. At that time the

Clerks insisted that her name be carried on their roster with the date when the position was reclassified in 1922. The management did nothing because, as it says, the Telegraphers were claiming that the job should be designated as "ticket agent" under their agreement.

On May 6, 1935, George Maples, claimant, whose seniority date was May 22, 1922, on the Operating Division roster sought to displace Mrs. Conway. No question is raised as to his right to exercise his seniority in general but the carrier refused to displace Mrs. Conway on account of her long continued service nor to do anything until the jurisdictional controversy could be settled.

In adopting this attitude we think it erred. The Clerks had theretofore agreed that Mrs. Conway's work was that of a ticket seller, and that position was expressly specified in the Clerks' agreement. But by reason of the act of the carrier it was being performed by an employee whose name it had removed from, and did not appear on, the proper roster. Displacement privileges, as we understand them, must be based on the roster and on it alone. Maples' seniority thereon as against one who had none shown, was undeniably superior. We are confronted with the question as to whether there was any reason why he could not exercise it. First, let us say, we believe that Mrs. Conway's name should be on the Clerks' roster with the date that she entered service on the job, whose duties have remained unchanged, viz., October 9, 1918. If there were a position classified as ticket seller at that time, she should have been assigned to it. If not, it should have been created. If seniority as of that date were not established for her by agreement with the Clerks in 1922, as we think it was, they acquiesced in it for ten years, during which time, we suppose, a copy of every yearly roster was sent to the organization. It was to settle such disputes and in recognition of some unwritten obligation to foreclose such questions that the Clerks and the carrier entered into a new agreement last year which provides that if a name has appeared for years on the roster unchallenged the date ascribed will not be changed.

The fact remains that it wasn't there when Maples asked for the position. What could the carrier have done? If this Division's Award 201, in which Mr. Spencer participated as Referee, be applicable to the present situation, the carrier could have at once placed Mrs. Conway's name, with the date she had long enjoyed, on the roster and foreclosed this grievance in its present form. If Award 250, prepared by Mr. Garrison, applies, the carrier could only correct the roster at the first of a year, but even then, the omission of her name having been called to its attention within the proper time at the beginning of 1935, it could have been restored as of January 1st that year, and this argument avoided. But both Referees have held, with the concurrence of the Division, that whilst a roster may be corrected under certain circumstances it is only from what appears upon its face that seniority rights shall be determined. In fairness to Mrs. Conway, we suggest that her name be restored at once, if that has not already been done, and that it be carried on the annual revisions hereafter. If incorrect in our ideas about her proper date, that can be settled later, if necessary. In the meanwhile, however, we cannot see that the carrier has any defenses to the present claim. It might be argued that Maples and his representatives knew all the facts and would be estopped from advancing their contention. But we must assume that they are acting in good faith in claiming that Mrs. Conway should be listed with a date junior to that of Maples. We cannot question Mr. Maples' motives if he is acting within his rights, even if there were occasion to do so.

This case has caused the Referee much concern, and he hopes his conclusions are correct. Having gone further into the record than was perhaps necessary, in order to define Mrs. Conway's future rights, he is unable to see why the whole decision must not depend upon the condition of the Clerks' roster on the day Maples requested a consideration of his rights. Any other finding would amount to a reversal of former well reasoned awards.

AWARD

Claim sustained subject to any income otherwise earned.

NATIONAL RAILROAD ADJUSTMENT BOARD,
By Order of Third Division.

Attest: H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 19th day of October 1936.