

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
GREAT NORTHERN RAILWAY COMPANY**

DISPUTE.—

"Should Charles Davis be compensated for monetary loss sustained as a result of being held off position of Claim Clerk, Minneapolis Freight Station, from September 28th, 1933, to July 20th, 1934?"

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.

Position of Claim Clerk, rate \$4.57 per day, Minneapolis Freight Station, was bulletined, Superintendent's Circular No. 59, September 15, 1933, and was assigned to Charles Davis, Superintendent's Circular No. 61, September 26, 1933. Mr. Davis reported for work on this position September 28, 1933, and worked approximately thirty minutes on Passing Desk and assisted the Expense Clerk for approximately one hour and forty-five minutes, after which he was advised that he was not qualified for the position. On October 1, 1933, Mr. Davis requested and on October 2, was denied an investigation to ascertain the reason for his having been disqualified.

On April 16, 1934, protest was filed with the General Manager, who, on June 15, 1934, ordered Davis placed on the position. Davis was advised by Superintendent on July 11, 1934, to report for trial, but for personal reasons did not report until July 19th.

On July 20, 1934, an employee senior to Davis was placed on the position in question through the exercise of seniority.

There is in evidence an agreement between the parties, bearing effective date of October 1, 1925, and the following rules are cited in support of claim:

"RULE 7

"BULLETINS—RULE 7. New positions or vacancies will be promptly bulletined and not to exceed ten days from date of new position or vacancy, in agreed upon places accessible to all employees affected, for a period of five (5) days in the districts where they occur; bulletins to be numbered consecutively and to show location, title, hours of service, and rate of pay. Employees desiring such positions will file their applications with the designated official within that time, and an assignment will be made within five (5) days thereafter; the name of the successful applicant will, immediately thereafter, be posted for a period of five (5) days where the position was bulletined. Titles of positions shall, as nearly as possible, conform with the work assigned.

"This rule shall not apply to positions in Class (3), but employees desiring such positions will file their applications for same and be given preference over junior employees. Notices of vacancies on such positions will be posted in the immediate station, store, etc., and the senior qualified applicant assigned.

"RULE 10

"FAILURE TO QUALIFY—RULE 10. Employees awarded bulletined positions will be allowed thirty (30) days in which to qualify, and failing, shall retain all their seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employee.

"RULE 31

"GRIEVANCES—RULE 31. An employee who considers himself otherwise unjustly treated shall have the same right of appeal as provided for by Rule 29, provided written request is made to his immediate superior within seven (7) days of the cause of the complaint."

Petitioner contends that Mr. Davis, having been awarded the position of Claim Clerk by bulletin, should have been accorded thirty days in which to qualify and that the carrier violated Rule 10 by arbitrarily removing him from the position; that Mr. Davis was fully qualified to perform the duties of the position; and also that the carrier violated the provisions of Rule 31 by denying Mr. Davis' request of October 1, 1933, for an investigation, there being a Local Adjustment Board decision, dated July 13, 1931, making Rule 31 applicable in instances where disqualification under Rule 10 is involved.

The Carrier represents that, on September 26, 1933, Mr. Davis was awarded, as senior bidder, position of Claim Clerk, Minneapolis Freight Station, and that his disqualification was based upon the fact that he was totally unfamiliar with any of the work on the position and that he did not have the necessary ability to perform the work.

Without passing on Mr. Davis' qualifications for the position, the Third Division finds that inasmuch as he was awarded and assumed the position and on the same day disqualified, he was, under the provisions of Rule 31 and Local Adjustment Board Decision of July 13, 1931, entitled to an investigation, which he requested and was denied. For these reasons, claim for monetary loss should be sustained.

The Division further finds that the Carrier notified Mr. Davis to report for duty on July 12th for trial and, for personal reasons, he did not report until July 19, 1934. Therefore, his claim should terminate July 12, 1934.

AWARD

Claim for monetary loss is sustained, September 28, 1933, to July 11, 1934, inclusive.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 6th day of November 1936.