

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**Third Division**

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS, EXPRESS AND STATION EMPLOYES  
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)**

**STATEMENT OF CLAIM.—**

"Claim of Mrs. Olive Marks, extra Telephone Operator on Roster 4, Superintendent of Telegraph District, for twelve (12) days pay at rate of \$2.78 per day."

**STATEMENT OF FACTS.—**Mrs. Olive Marks, seniority date of November 30, 1925, on Roster 4, Superintendent of Telegraph, under date of July 27, 1935, made application to the Agent, Tucson, Arizona, for extra work as matron at Tucson Passenger Station, which position comes under Roster 5 of the Tucson Division Seniority District.

On August 1, 1935, Mrs. Long, who was not an employe of the carrier, was assigned to position of matron, Tucson Passenger Station, and worked the position until August 15, 1935.

**POSITION OF EMPLOYES.—**The principal rule involved in this case is Rule 38 of the agreement between the parties, bearing effective date of February 1, 1922, reading:

**"APPLICATIONS FROM OTHER DISTRICTS**

**"RULE 38**

"Applications for positions from employes on other seniority districts having sufficient fitness and ability will be given preference over those of non-employes."

As can be seen from its context, the primary purpose of this rule is to give to employes on seniority districts the right and opportunity to secure employment on other districts on which they do not hold seniority rights. It is a relief from the restrictions laid down in Rules 29 and 30 in that it permits an employe to seek better positions on other districts than his own. It also permits an extra employe on one district to work on districts other than his own where the opportunity for employment may be greater. Rules 27 and 28 guarantee to employes the right of promotion and that assignments and displacements shall be based on seniority, fitness, and ability.

At no time during the handling of this case with division officials was the question of fitness or ability of Mrs. Olive Marks for this position raised. Contrary to the provisions of the rules cited, the carrier assigned the position in question to a party who held no seniority rights under the agreement.

**POSITION OF CARRIER.—**The carrier avers that the National Railroad Adjustment Board cannot lawfully grant an award in favor of the petitioner for the reason that the claim herein presented is not supported by the agreement, and an award in favor of the petitioner would have the effect of establishing a new rule which is not within the authority vested in this Board.

Mrs. Virgil Long has been an employe of the carrier continuously, beginning with and subsequent to July 1, 1933, and the fact that she did not hold seniority rights under the Clerks' Agreement as of August 1, 1935, the first date of this claim, did not deprive her of her status as an employe of the carrier. The last paragraph of Rule 41 provides that employes laid off on account of reduction in force shall be carried on seniority lists for a period of six months without the status of an employe, which obviously refers to and cannot legally extend beyond her status under the Clerks' Agreement. It does not and cannot legally deprive

a person of the status of an employe except so far as the Clerks' Agreement is concerned, and, as a matter of fact, employes who are without the status of an employe under the Clerks' Agreement, by virtue of Rule 41, nevertheless, during the six months period set up in Rule 41, also subsequent to said six months period, such persons frequently continue in the service and perform work for the carrier which does not come within the scope of the Clerk's Agreement, the Clerks' Agreement does not deprive said employes of that right and could not lawfully do so; hence an employe does not lose his status as an employe simply because he may have lost his seniority under the Clerks' Agreement through the operation of that Agreement.

**OPINION OF THE BOARD.**—The record shows that the last service performed for the carrier by Mrs. Virgil Long was relief service as Matron at Tucson Passenger Station December 21, 1934, to January 3, 1935. When placed on the matron's job at Tucson Passenger Station August 1, 1935, she had not been in the employ of the carrier for approximately seven (7) months and therefore lost her seniority after six (6) months under the provisions of Rule 41 and, not being in the service of the carrier, on August 1, 1935, her status was that of a non-employe insofar as the filling of this position is involved by the application of Rule 38.

**FINDINGS.**—The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are, respectively, carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934:

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That under the provisions of Rule 38, Mrs. Olive Marks, who held seniority rights on Roster 4 and had made application for position in question, should have been given preference over Mrs. Long, a non-employe, in filling the vacancy on Roster 5.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
*Secretary*

Dated at Chicago, Illinois, this 12th day of February, 1937.