

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION EMPLOYES
GRAND TRUNK WESTERN RAILROAD COMPANY**

STATEMENT OF CLAIM.—

"Claim of employes that the original appointment and subsequent bulletined assignment of W. Helfrich to position of Chief Clerk, Lansing, Michigan, Freight Office was in violation of agreement rules and claim of Ralph DeCamp that he be now assigned to said position and reimbursed for wage losses suffered by reason of violation of agreement rules and his seniority rights."

STATEMENT OF FACTS.—The facts in this dispute are summarized from the statements of facts by both parties, viz.:

For many years prior to 1932 the Carrier maintained a position of Chief Clerk to Agent in the Lansing, Michigan, Freight office.

As a result of a vacancy in that position, Mr. Ralph DeCamp was regularly assigned thereto by bulletin in accordance with the rules of the Clerk's Agreement on September 26, 1927, and occupied said position until July 12, 1932, when the position was abolished.

This position remained abolished until June 1936. On or about June 16, 1936, the company re-created the position of Chief Clerk to the Agent and filled it by appointment of Mr. Helfrich. No bulletin was posted advertising this position to the employes at that time.

The General Chairman of the Organization protested the filling of the position in question by appointment of Mr. Helfrich, who held no seniority rights on the seniority roster covering the Agent's office. As a result of this protest the Carrier bulletined the position in question as of June 20th. Several employes holding seniority rights on the seniority district on which the position was located filed applications in accordance with the rules of the Clerks' Agreement. Mr. Ralph DeCamp filed application for same and was the senior bidder among those who were eligible to bid for and be assigned to the position. On July 2, 1936, the Carrier issued a bulletin assigning the position in question to Mr. Helfrich who, as stated above, held no seniority rights to the position in question.

Mr. DeCamp holds seniority rights from July 2nd, 1923, in Lansing Freight Office. Since June 2nd, 1936, Mr. DeCamp has held position of Accountant, at rate of \$5.55 per day.

POSITION OF EMPLOYES.—Rules 3, 4, 5, 6, 8, 10, 17, and 19 of the Clerks' Agreement read as follows:

Rule 3, caption **SENIORITY DATUM**—Seniority begins at the time the employe's pay starts.

Rule 4, caption **PROMOTION BASIS**—Promotions to positions coming within the scope of this agreement shall be based on ability, merit and seniority, ability and merit being sufficient, seniority shall prevail, supervising officer to be the judge.

Rule 5, caption **SENIORITY DISTRICTS**—Seniority districts shall be the Superintendent's and Master Mechanic's Division, with the understanding that all new positions and vacancies will be filled, if possible, at the station where new position or vacancy occurs.

The Department head will not have to advertise positions outside his respective division or sub-division in case of inability to secure an employee competent in the office where vacancy occurs; he will have the prerogative to select an employee to fill the position, it being agreed, however, that an endeavor be made to secure such employees from the particular branch of service wherein

the vacancy occurs. As an example, in the Stores Department each sub-division of this department will rank as a separate seniority district, viz: The Accounting Department, Stores Department, and each individual storekeeper will keep a separate individual roster and maintain a separate seniority district.

The above example shall rule in all other departments covered by this agreement; in other words, each individual station and sub-station at such station will rank as a separate seniority district.

Rule 6, caption VACANCIES, NEW POSITIONS—Seniority rights of employees to new positions and vacancies will be governed by Rule 4 of this article covering promotion.

Rule 8, caption FAILURE TO QUALIFY—Employees awarded promotions under Rule 4 of this article will be allowed thirty (30) days in which to qualify, and failing, may retain all their seniority rights and may bid on any bulletined position, but will not displace any regularly assigned employee.

Rule 10, caption BULLETIN—New positions and vacancies will be bulletined promptly for ten (10) days in places accessible to employees affected in the districts where they occur, bulletin to show location, title, hours of service, and rate of pay. Employees desiring such position will file their applications with the designated officer within that time and an assignment will be made within ten (10) days thereafter.

This rule shall not apply to laborers or other than clerical positions, except as may be agreed upon hereinafter.

Rule 17, caption ROSTER—The seniority roster of all employees in each seniority district or sub-district, showing name and proper dating, will be posted in agreed upon places accessible to employees affected. The roster will be revised in January of each year and will be open to protest in writing for a period of sixty (60) days from the date of posting. Upon presentation of proof, such error will be corrected.

Rule 19, caption FILING APPLICATION—Employees filing application for positions bulletined on other districts or on other rosters will, if they possess sufficient merit and ability, be given preference in accordance with Rule No. 4 of this Article, over non-employees.

The carrier admits that Mr. Helfrich did not hold any seniority rights on the roster of the Lansing Freight Station where this position was located.

The carrier admits that Mr. DeCamp did hold seniority rights on the roster on which this position was located.

The carrier's record will show that Mr. DeCamp was assigned to and did perform all the duties and responsibilities of the position of Chief Clerk to Agent in the Lansing Freight Office from September 26, 1927, to July 12, 1932, a period of almost five years.

The performance of the duties and responsibilities of this position on the part of Mr. DeCamp for a period of almost five years clearly evidences to any fair-minded person that he was qualified in every respect for assignment to the position when it was bulletined on June 20, 1936. The Carrier has made no showing and can not make any showing that the duties and responsibilities of this position have in any manner been changed from those in existence during the period of time Mr. DeCamp was assigned to the position.

Employees contend that the actions of the carrier in this case were in violation of the rules of the Clerks' Agreement and seniority rights of Mr. DeCamp. Employees contend, therefore, that the Carrier should be required to assign Mr. DeCamp to the position in question and reimburse him for any wage losses suffered.

POSITION OF CARRIER.—The carrier cited the Agreement between the parties bearing effective date of July 1, 1921, and referred to the following rules therein which have been quoted under the "Position of Employees," viz: Rules 3, 4, 5, 6, 8, 10, and in addition Rule 11 reading as follows:

TEMPORARY APPOINTMENT.—RULE 11. Bulletined positions may be filed temporarily pending an assignment, and in event no applications are received may be permanently filled without regard to these rules.

After brief review of DeCamp's services and the circumstances of his appointment as Chief Clerk, in which position he served from September 26, 1927, until July 12, 1932, which included statement of doubt as to DeCamp's ability upon appointment and dissatisfaction with conditions in the office during his service as Chief Clerk, the Carrier stated that, when as a result of decreasing revenue it was necessary to make a reduction in the freight-office force at Lan-

sing, in July 1932, we dispensed with the position on which the least benefit was being obtained because of the general incompetency as such of the employee then occupying the position, who was Mr. DeCamp.

Increasing business in the early months of 1936 led to the reinstatement of the Chief Clerk's position. The consideration given to the various employees who were available or had applied for the position including the claimant and Mr. Helfrich to whom the position was assigned is recited, as was the rectification of the original omission in respect to the issuance of bulletin as required by Rule 10.

In asserting its right to disqualify Mr. DeCamp and to make the bulletin assignment of Mr. Helfrich as Chief Clerk, the carrier refers to Rule 4 which provides that the supervising officer is the judge of whether an applicant for promotion has sufficient ability and merit and to the first sentence of the second paragraph of Rule 5 in justification of the assignment of Mr. Helfrich, an employee outside of the seniority district in which the position is listed, stating further in this respect that we maintain that under Rules 4 and 5 there is ample basis for our action in judging DeCamp lacked qualifications for the position for which he filed bid and that in the absence of a competent employee in the Lansing office we were privileged to select Helfrich who was available elsewhere on the Superintendent's division and who has done first class work since he was transferred to the Chief Clerk's position.

OPINION OF BOARD.—Under the circumstances revealed in the record and in consideration of the rules of the agreement, good cause is not shown for the declination of the carrier to restore claimant DeCamp to the position of Chief Clerk to Agent when the position was reestablished June 16, 1936.

The fact that DeCamp had held the position for over four years prior to its abolition on June 13, 1932, is a presumption of his capacity. If, as the carrier contends, the business of the office was not conducted in a satisfactory manner during DeCamp's incumbency of the Chief Clerkship, because of his incapacity, the remedy lay in his disqualification under the rules. But it is not shown that he was advised that his services were not satisfactory.

The agreement does not require a carrier to continue an employee in a position he is not competent to fill, but if the carrier in effecting necessary force reduction selects for abolishment a position for the reason among others that the incumbent lacks competency, as the carrier here claims it did, evidence should be produced to show why he is considered incompetent, if upon reestablishment of the position he is denied restoration thereto for alleged lack of qualifications. Such evidence has not been produced.

There is, however, in the record of service of the claimant in this case sufficient to have warranted at least that he should have been given a trial to demonstrate his qualifications.

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 employee involved in this dispute are respectively carrier and employee 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 the evidence in this case is not sufficient to show the incompetency of DeCamp for the position of Chief Clerk to the Agent, Lansing, Michigan, Freight House.

AWARD

Claimant DeCamp shall be placed on the position of Chief Clerk to the Agent, Lansing, Michigan, Freight House, and be given an opportunity to demonstrate his qualifications therefor, such trial to be subject to the terms of the Agreement.

If claimant DeCamp is able to qualify for the position, he shall be paid the net wage loss he has sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of the Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1937.