

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: "Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that—

1. Agent Maher of the Eads-East St. Louis Seniority District refused to comply with the request of the Local Committee to post the Third Trick Carding Job for bid on July 19, 1937, when it was vacant, and thereby violated the Clerks' Agreement;

2. James Ham, W. J. Rolen, and R. H. Johnson, Jr., are entitled to seniority dates on the Eads-East St. Louis Seniority Roster as Clerks as of the date each of them first performed and were paid for services as clerks;

3. July 1, 1937, rosters shall be corrected to properly record such seniority dates; and

4. Said employees shall be reimbursed for wage losses sustained as a result of carrier failing and refusing to assign said employees to positions and vacancies in accordance with seniority rules of the Agreement retroactive to July 19, 1937.

STATEMENT OF FACTS: The employees stated the facts as follows:

"Messrs. Ham, Rolen and Johnson have been employed by the carrier as messenger boys in the Eads-East St. Louis Seniority District. From time to time as Agent Maher was in need of a clerk to fill in vacancies caused by sickness, leave of absence or men laying off from day to day, he assigned the aforementioned messengers to fill such vacancies as clerks and they were properly compensated for such time as they worked as clerks.

"It has been the practice in the Yard Office District on this Carrier to assign messengers to clerical work, and to properly compensate them at clerical rates for such, when there were no furloughed clerks available; and when vacancies occurred, they were bulletined and bid in by the senior messenger who had been worked as clerk.

"On July 7, 1937, Agent Maher conferred with the Local Committee and General Chairman Dwyer seeking permission to employ an extra experienced clerk to be used to fill in vacancies that occur from day to day and which positions the messenger boys were not qualified to fill. These positions being the more important and higher rated in the office. Upon until this time, it had been Agent Maher's practice, when such vacancies occurred, to reassign

From G. E. Greendonner

'Wish to advise we have never placed a messenger on the yard clerks' seniority list until he was placed on a regular yard clerk's job.'

and communication from Station Master Perry as to the usher or red cap-gatemans claim:

'We checked our records for a period of ten years, although I know that ushers were used temporarily for years prior to that, working one or more hours, or days, as conditions warranted. We at no time carried the ushers on the gatemen's seniority roster.'

"The check referred to in Mr. Perry's letter indicates the temporary use of from one to thirty ushers or red caps as gatemen in a single month, none of whom were ever accorded seniority as gatemen until positions as such were proffered and accepted by them. It is significant to note that the only men employed as ushers or red caps for whom the organization is demanding seniority as gatemen for temporary service as such are Messrs. French, Rutledge and Heitman, although hundreds of others over a period of years have worked temporarily as gatemen.

"As repeatedly stated to organization representatives, the wording of our application rule must be considered in connection with the U. S. Railroad Labor Board rule from which it was taken and the remainder of the rules in the agreement covering the filing and approval of applications and temporary vacancies and the manner of their application under our practices during the entire time the agreement has been in effect. Rule 20, dealing with the posting of seniority rosters, is also a vital one so far as this controversy is concerned. It provides that 'rosters will be revised and posted in January and July of each year and will be open to protest for thirty days.' Prior to the filing of these claims no protests have ever been made by the organization because of our failure to carry messengers working temporarily as yard clerks on the yard clerks' seniority rosters, or ushers or red caps working temporarily as gatemen on the gatemen's seniority rosters.

"Failure to post the third trick carding job for bid July 19, 1937, is not involved in the controversy as it does not affect the question at issue. The job should have been posted in accordance with the rules, and we so admitted to organization representatives in conference. While it has no particular significance so far as the 'principle' involved is concerned, the Board's attention is called to the fact that the yard clerk given the vacancy at CD was in the continuous employ of this company in the CD seniority district from August 1902 until August 1918 and in the Illinois Transfer seniority district from October 16, 1918 until given the job at CD July 19, 1937, whereas the three messengers for whom the Clerks' organization is demanding seniority as yard clerks entered our service as **messengers** (Ham) February 1, 1936, (Roland) February 4, 1936, and (Johnson) January 9, 1937.

"All data submitted in support of carrier's position has been presented to the duly authorized representative of the employees and made a part of the particular question in dispute.

"We desire to be present at the oral hearing."

OPINION OF BOARD: Messengers are covered by the agreement between the parties, but carried on separate seniority rosters from clerks. They have never been carried on the clerks' seniority roster. While it is true that the messengers involved have not been assigned on bulletined positions subject to the provisions of Rule 12, as carrier contends is necessary before messengers should be given clerical seniority rights, and as the rules have heretofore been applied, the evidence is clear that these messengers have been used with regularity as yard clerks on extra work when furloughed clerks were not available.

In view of all the facts and circumstances involved in this particular case, the Board feels that equity will be done to all interests involved by ruling that

the interpretation here made be not retroactive prior to the date of this award for any employe, except that the seniority dates of the three individuals as clerks be established as of dates shown in the award with the privilege of now exercising the seniority rights thus established, subject to fitness and ability, over any employe with seniority dating of July 19, 1937 or thereafter; and claim for compensation be disallowed.

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 employes involved in this dispute are respectively carrier and employes 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 seniority dates as clerks for the three individuals named shall be established on the January 1938 Eads-East St. Louis roster, as indicated in award, together with displacement rights to extent indicated in opinion; and claim for compensation is disallowed.

AWARD

The following seniority dates shall be accorded employes listed herein on the Eads-East St. Louis Clerks, roster.

James Ham	Jan. 20, 1937
W. J. Rolan	Feb. 14, 1937
R. H. Johnson, Jr.	June 29, 1937

and they shall now be permitted to exercise these rights on positions occupied by employes with seniority dating of July 19, 1937, or thereafter.

Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of January, 1938.