

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of R. B. Earnhardt, furloughed clerk, Spencer, North Carolina, for the difference between the Storehouse Man's rate \$3.60 per day and the Clerk's rate of \$4.35 per day, September 16th to November 8, 1935, inclusive, on account of not being used to perform clerical work in the office of Division Storekeeper, Spencer, North Carolina, in connection with the annual inventory, such work as in the past has been assigned to the clerical employees."

EMPLOYEES' STATEMENT OF FACTS: Prior to the inventory period for the year 1935 it was customary to establish temporary clerical positions at the Spencer, North Carolina, Storehouse to assist the regularly assigned employees in the handling of the inventory. During the inventory period in question no clerical positions were established and the clerical work ordinarily performed by clerical employees in the handling of the annual inventory was performed by Apprentice Storekeepers (excepted employees).

There is in evidence an agreement between the parties bearing effective date of September 1, 1926, from which Articles 2 and 3 thereof are cited, reading:

ARTICLE II.

"**SENIORITY—RULE 4:** (a) Seniority will be effective and will date from the last time entering the service on the respective Seniority District in the respective classes of service embraced by this agreement.

"**NOTE:** Seniority as above specified for respective classes is intended to apply to groups on respective seniority districts; i. e., clerks to clerical positions covered by schedule on their respective seniority districts; ticket and waybill sorters to such positions on their respective seniority districts.

"(b) Where necessary extra clerks may be employed on the following basis. At yard offices one extra clerk may be allowed to every five regular positions. An extra board will be maintained showing the seniority of the extra clerks. Said extra clerks will accumulate seniority to yard office positions only and when they are assigned to a regular yard office position they will be allowed their accumulated seniority on the division roster.

claim was not filed until seven weeks after the Greensboro Accounting Bureau was abolished, and he very readily agreed to and did withdraw the claim. Many other cases have been disposed of in accordance with the provisions of this understanding, but carrier deems it unnecessary to burden the record with their citation, reserving, however, the right to so do if in its judgment desirable or necessary.

"Carrier expresses regret that a case of the character of the one covered herein should have failed of disposition in conference between representatives of the interested parties, but employes' representative declined to favorably consider any settlement other than the payment without reservation, of Mr. Earnhardt's claim, and the principle involved was one which carrier's representative could not concede."

OPINION OF BOARD: It is now conceded that the work in question should have been bulletined and the only questions remaining are whether Mr. Earnhardt was entitled to claim it and if so for what period.

He was not the senior qualified employee—Mr. Henry being such—and consequently could not have claimed the work September 16, 1935, Mr. Henry, of course, could not transfer, assign or waive his rights in favor of any particular person. Those rights upon being abandoned by Mr. Henry, automatically inured to the next qualified man who made claim for them. It is not clear from the evidence just when Mr. Henry abandoned his rights and it likewise is not definite whether the local representative's oral representations of September 17th made claim for Mr. Earnhardt specifically; the earliest definite evidence of a specific claim on behalf of Mr. Earnhardt is the local representative's letter of September 25, 1935.

Accordingly the Board concludes that Mr. Earnhardt is entitled to the difference in pay claimed between September 25th and November 8, 1935, on the days the apprentice occupied the position.

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 Mr. Earnhardt is entitled to the difference in pay claimed from September 25th, 1935, to November 8, 1935, on the days the apprentice served.

AWARD

Claim sustained to extent indicated by findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of January, 1938.