

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

**GULF COAST LINES, INTERNATIONAL-GREAT
NORTHERN RAILROAD COMPANY, SAN ANTONIO,
UVALDE & GULF RAILROAD COMPANY, SUGARLAND
RAILWAY COMPANY, ASHERTON & GULF
RAILWAY COMPANY**

STATEMENT OF CLAIM: "Claim of P. A. Johnston for all loss sustained because of failure of the carrier to return him to service, as required by Rule 19, when forces were increased at Mercedes, Texas, on March 3, 1936."

EMPLOYEES' STATEMENT OF FACTS: "Mr. Johnston, with seniority date November 22, 1926, was cut off in reduction of force the latter part of January, 1936. He filed his address with the Superintendent, and advised the Superintendent shortly thereafter of change in his address. In both instances, the letter filing his address and his letter advising change in address were acknowledged by the Superintendent.

"Sometime prior to February 27, 1936, the Superintendent received authority to increase the clerical force at Mercedes, Texas, and on February 27, 1936, the Superintendent issued Circular No. EK-35 advertising for bids on the position. W. B. Lauder, who was holding a regular position at Mission, Texas, was called to work the position pending an assignment. Mr. Lauder's seniority date was May 1, 1927. On March 3, 1936, the Superintendent assigned C. C. Jacksone to the position. Mr. Jacksone's seniority date is January 6, 1927.

"Mr. Johnston was the senior furloughed clerk and the next clerk to be called back to service under Rule 19. However, the carrier did not return Mr. Johnston to service, but completely ignored the provisions of Rule 19 and assigned a junior employee, Mr. Jacksone.

"Mr. Johnston was notified by the Organization to report for the position, and Mr. Johnston immediately reported for the position and went to work on March 14, 1936."

CARRIER'S STATEMENT OF FACTS: "On February 27, 1936, position of steno-clerk at Mercedes was bulletined as required by Agreement, Rule 10, which reads as follows:

'(a) New positions or vacancies will be promptly bulletined in all offices, freight houses, stations and storehouses on the district where

position abolished or reduction of force must exercise their seniority rights in displacing junior employes within ten (10) days.

'When forces are increased, employes shall be returned to service in the order of their seniority rights. Employes desiring to avail themselves of this rule must file their addresses with the proper official at the time of reduction, advise promptly of any change in address, and renew address each ninety (90) days. Employes failing to renew their address each ninety (90) days or to return to service within seven (7) days after being notified (by mail or telegram sent to the address last given), or give satisfactory reason for not doing so, will be considered out of the service.

'As much advance notice as possible will be given employes affected in reduction of force or in abolishing positions. Division Chairman will be given copy of such notice.'

"It will be noted that rule requires the senior furloughed employe to be returned to service first. Mr. Johnston was not the senior furloughed employe at the time position was authorized—Clerk Dodd was senior man and refused to accept position. Mr. Johnston was assigned to position as soon as he made request to be placed on position, and Rule 19 was fully complied with.

"It has never been the practice to call men back under Rule 19 except by bid. It is known that such an arrangement would not be possible due to the many classifications of clerical help. We have yard clerks who could not perform station or accounting work, other clerks who cannot perform stenographic work, etc. Heretofore, the positions have been bulletined and the men feeling capable have bid on them and been assigned in accordance with their seniority, as was done in this case.

"The original claim in this case made by Johnston was that he was away from the territory and did not have access to bulletin and did not know of the position until March 10. For this reason, he was allowed to exercise his seniority on the position upon his return to headquarters (Kingsville) on March 11.

"It is the position of the Carrier that the position of steno-clerk at Mercedes was a new position and under terms of Rule 10 required being bulletined. This was done and Chairman of the Organization was furnished with copy of bulletin and assignment.

"The Carrier contends that it complied with the terms of working Agreement and that Mr. Johnston is not entitled to pay as claimed and Carrier should not be penalized account of complying with working Agreement."

OPINION OF BOARD: Rule 19 provides in part that when forces are increased, employes shall be returned to service in the order of their seniority rights, subject to an obligation upon the employe to keep his address filed with the proper officer and to return to service within seven days after being notified by mail or telegram sent to the last address given.

The position of stenographer-clerk at Mercedes was bulletined as provided in Rule 10, February 27, 1936. The bulletin expired March 3, and regular assignment was due to be made within five days thereafter.

During the pendency of the bulletin, there were five clerks senior to Johnston off in reduction of force, four of whom had been granted leave of absence. None of these five clerks made application for the position. One of the five clerks immediately preceding Johnston in seniority, who did not bid for the position, was not on leave of absence. His failure to exercise his seniority when offered the position constituted a waiver of his seniority rights to the position under Rule 19.

Johnston was then the next senior employe who met the requirements of the position, to be returned to the service, and he should have been recalled

to the service following the expiration of the bulletin March 3 and the failure of the man preceding him on the seniority list to take the position. The record shows that Johnston was in Kingsville, headquarters of superintendent, on March 11, when he was given written permission to displace the occupant of the position in question located at Mercedes, approximately 100 miles from Kingsville. He did not report for duty on the position until March 14.

As Johnston was at Beaumont, a distant point, on March 4, when assignment was to be made under the bulletin, it is evident that he could not have been available for service at Mercedes earlier than March 5, had he been notified immediately on March 4 upon the declination of the position by the man next preceding him on the seniority roster. The claim for loss of compensation under the facts of this case should be limited to the assigned working days of the position, March 5 to 11, inclusive, 1936, less amounts earned in any other employment.

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 the provisions of Rule 19 were not properly applied.

AWARD

Claim sustained for the assigned days of the position, March 5 to 11, inclusive, 1936, less amounts earned in any other employment.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of April, 1938.