

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

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. Chester Ambrow is entitled to a seniority date on the St. Louis Freight Collection Bureau seniority roster as a clerk as of the date he first performed and was paid for services as a clerk, namely, January 18, 1937.
2. July 1, 1938 roster shall be corrected to properly record such seniority date."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties: "Mr. Chester Ambrow was employed by the Carrier as a messenger boy in the St. Louis Freight Collection Bureau February 14, 1929. From time to time as the Manager of the Bureau was in need of a clerk to fill in vacancies caused by sickness, leave of absence or a clerk laying off from day to day, he assigned the aforementioned messenger to fill such vacancy as clerk and he was properly compensated for such time as he worked as clerk.

"It has been the practice in the Collection Bureau 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.

"Since January 1, 1937, Mr. Ambrow has been worked as a clerk on the following dates:

January 18, 1937 to March 31, 1937
June 21, 1937 to June 26, 1937
August 2, 1937 to August 14, 1937

and he was assigned to a regular clerical position on September 22, 1937."

There is in evidence an agreement between the parties bearing effective date of February 1, 1922, and the following rules thereof read:

RULE 5. APPLICATION

"Seniority begins at the time the employe's pay starts and the applications of new employes shall be approved or disapproved within sixty (60) days after the applicant begins work. In the event of the applicant giving false information, this rule shall not apply."

"Rule 20 provides that a seniority roster of all employees in each district showing the name and proper dating shall be revised and posted in January and July of each year and will be open to protest for 30 days. It provides that upon presentation of proof of error by an employee or his representative such error will be corrected. We are asking in our claim that the July roster of the St. Louis Freight Collection Bureau Seniority District be corrected and that Mr. Ambrow be given a clerical seniority date as of the first day he was assigned as a clerk which date is set forth in the Statement of Facts.

"In support of our contention that this employee herein mentioned is entitled to seniority as a clerk from the first date he was worked as such, we wish to call the Honorable Board's attention to Decisions 1009 and 1026 of the United States Labor Board which deal with similar circumstances. We wish to call the Board's attention also to their Awards 566, 567, and 669. The first two of which (566 and 567) dealt with similar disputes on this property and the circumstances and facts involved are identical to this case."

POSITION OF CARRIER: "Mr. Ambrow is shown on the clerks' roster as of the date he was proffered and accepted a regular position as a clerk in accordance with our established practice over a period of 16 years, or ever since the current agreement with the Clerks' organization has been in effect. That practice was acknowledged in the 'Opinion' made a part of Award No. 567. Notwithstanding that acknowledgment, the Board saw fit to change our practice under the rules effective January 18, 1938.

"Mr. Ambrow was proffered and accepted a regular position as clerk on September 22, 1937, and that date has been carried on all rosters issued since that time beginning with the one of January 1, 1938. To accord him seniority as of the date he worked extra would put him ahead of a man on the roster whose seniority date is September 1, 1937, and who, incidentally, entered our service as messenger nearly three years before Mr. Ambrow. To grant the request of the Clerks' organization would not only be unfair to this man but to many others in the same position. Evidently the Board realized what such a change in the relative seniority of the men on the various rosters would have meant to the force as a whole when they made the statement in Award No. 567 '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 employee' except the three individuals involved."

OPINION OF BOARD: The same question presented by this claim was before this Board in Docket CL-612, Award 567. While in that case the Board found that the Carrier had violated the agreement, it stated:

"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 employee, 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 employee with seniority dating of July 19, 1937 or thereafter; and claim for compensation is disallowed."

The facts show that the employee involved in this case is in somewhat the same situation as were the three employees involved in Docket CL-612 and the Board feels that equity entitles the parties here to the same rights and limitations prescribed in the "Opinion of Board" in Award 567. No claim for compensation is made in this case and none is allowed.

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 Chester Ambrow is entitled to a seniority date on the St. Louis Freight Collection Bureau seniority roster as a clerk as of the date he first performed and was paid for services as a clerk, i. e., January 18, 1937.

AWARD

That Chester Ambrow be accorded on the St. Louis Freight Collection Bureau seniority roster, seniority as a clerk dating from January 18, 1937 and the roster of July 1, 1938 be corrected accordingly.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of January, 1939.