

**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

"The Carrier violated the rules of the Clerks' Agreement when

1. On May 29, 1938 it refused to assign R. H. Johnson, Jr. to vacancy on position of clerk at North Hump, C. D. Yard Office, hours 7:00 A. M. to 3:00 P. M., rate \$6.03.
2. On June 3, 1938 it refused to assign Walter J. Rolen to vacancy on position of clerk at Cabin 1, C. D. Yard Office, hours 11:00 P. M. to 7:00 A. M., rate \$5.82, and
3. The employees involved in or affected by said violation of rules be compensated in full for any monetary loss resulting from the Carrier's actions."

EMPLOYEES' STATEMENT OF FACTS: "On May 29, 1938 the regular assigned occupant of the clerical position on the first shift at what is known as the North Hump, East St. Louis-Eads District, laid off. The Carrier Representative called J. T. Dunworth to fill vacancy. Mr. R. H. Johnson, Jr.'s clerical seniority date is June 29, 1937 and Mr. J. T. Dunworth's clerical seniority date is January 17, 1938.

"On June 3, 1938 the regular assigned occupant of the third shift clerical position at Cabin 1, East St. Louis-Eads District, laid off. The Carrier's Representative assigned Mr. R. H. Johnson, Jr. to the position. Mr. Walter J. Rolen's seniority date (clerical) is February 14, 1937 and Mr. R. H. Johnson, Jr.'s clerical seniority date is June 29, 1937.

"Messrs. Johnson and Rolen hold the above clerical seniority dates having formerly occupied positions as yard clerks, but due to force reduction they were furloughed as such and exercised their seniority over junior employees, and are now working as messengers, and were ready and available to answer a call for clerical duty."

CARRIER'S STATEMENT OF FACTS: "The following statement was made in my letter of June 30, 1938, to General Chairman Dwyer:

"Your statement in the conference is the first intimation that we have had, although we have exchanged correspondence on the subject

"The procedure outlined in the above mentioned letter has been followed since that date and has been working very satisfactorily. Shortly after the force reduction in the Spring of 1938, Agent Maher received instructions from the General Superintendent's Office to disregard the instructions contained in this letter, and to discontinue working any employee more than one shift in a twenty-four hour period regardless of the fact that in so doing the employee would be exercising his seniority for extra work as provided in Rule 68.

"Employees contend that the Carrier violated Rule 68 when it failed to call Messrs. Johnson and Rolan to fill the vacancies on May 29, 1938 and June 3, 1938 respectively, and it, therefore, should be required to reimburse said employees for wage losses suffered as a result of the Carrier's action.

"The Rules, Facts and Circumstances in this claim are in all respects similar to or identical with the Rules, Facts and Circumstances in cases disposed of by Awards Nos. 105, 106 and 107 and the principles therein established support similar award in this claim."

POSITION OF CARRIER: "Notwithstanding the principle involved and the apparent acquiescence of the organization in our views until June 10, 1938, as indicated in the excerpts quoted in the Statement of Facts, we reluctantly agreed to the following interpretation involving the application of Rules 18 and 68 of the current agreement, effective July 15, 1938:

'It is understood that regularly assigned messengers holding dual seniority as messengers and yard clerks will participate in all extra yard clerk work in accordance with their seniority, except to the following extent:

'1st. Any messenger working two tricks in 24 hours (one as messenger and one as clerk) will not be permitted to work his regular trick as messenger the following day.

'2nd. No messenger will be permitted to make a total of more than six days in one week in the combined capacities, in the exercise of his seniority.'

"This interpretation, of course, has no effect on the time claims of Messrs. Rolan and Johnson, May 29 and June 3, 1938, which are not valid under the practices that existed for the past several years, during all of which time we were of the opinion that the Clerks' organization was unalterably opposed as a matter of principle to extra or furloughed forces working two tricks in 24 hours to the detriment of extra yard clerks who held no seniority as messengers and could not participate in that work. Note particularly excerpts from letters of July 26, 1934, and December 17, 1935.

"In addition to the claims being without merit under the practices that existed under the rules on the dates involved, we feel that our action in agreeing to the organization's viewpoint, notwithstanding our belief in the principle involved, is sufficient reason for withdrawal of any claims originating prior to that time."

OPINION OF BOARD: During the depression considerable dissatisfaction developed among the employees as to the method followed in working furloughed employees on the property of this carrier who had been reduced from clerks to messengers and who still retained their clerical seniority. This finally led to a conference between the parties at which an understanding was reached and embodied in a letter dated January 8, 1936 from the General Superintendent of carrier to the General Chairman of the Brotherhood, as follows:

"In our conference yesterday we discussed the practice of messengers at CD working two shifts within a 24-hour period.

"There is no warrant, especially under present conditions, for employees working more than one shift in 24 hours unless they do so in

the application of their seniority rights. It is possible for a first shift messenger holding dual seniority as messenger and yard clerk to be called for yard clerk duty on the third shift in emergency cases, such as employees laying off on short notice or failing to show up. When such occasions do arise we will not permit the messenger to work his regular tour the next day, but will call an extra man in his place. In instances where vacancies are known in advance and a regular messenger is assigned as a yard clerk on any shift, he will not be permitted to work his regular trick as messenger; an extra man will be called to fill his place. Necessary instructions are being issued to Agent Maher."

Johnson's claim is based on failure to call him to vacancy on position of clerk, North Hump, C. D. Yard Office, on May 29th, 1938, hours 7:00 A. M. to 3:00 P. M. Johnson had worked as a clerk at Cabin No. 1 from 3:00 P. M. to 11:00 P. M., May 28th, consequently was not available for vacancy on position of clerk at North Hump, C. D. Yard Office, on May 29th unless used twice within 24-hour period.

Rolen's claim is based on failure to call him to vacancy on position of clerk at Cabin No. 1, C. D. Yard Office, on June 3, 1938, hours 11:00 P. M. to 7:00 A. M. Rolen had worked as a messenger from 3:00 P. M. to 11:00 P. M. June 3, and was not available for vacancy on position of clerk at Cabin No. 1, C. D. Yard Office on same day unless used twice within 24-hour period.

These claimants held seniority rights over the employees used to fill the vacancies and their claims are based on the contention that their seniority rights to vacancies of this character were preserved in the understanding embodied in the letter of January 8, 1936.

We do not so construe this letter. To place such an interpretation upon it would render it practically meaningless. The parties attempted in this letter to meet a practical situation and the clear intent of the letter was to limit employees to one shift in any 24-hour period except in emergency cases as outlined in the letter. As further evidence that such was the intention of the parties, shortly after these claims arose the parties to the Agreement held another conference and entered into a Supplemental Agreement relating to this matter, effective July 15, 1938, under which no claims of this character may arise in the future.

The Board finds that the agreement of July 15, 1938 expresses the intent of the parties as embodied in the agreement of January 8, 1936. The claim will be denied.

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 employees involved in this dispute are respectively carrier and employees 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 carrier in the action complained of did not violate the agreement between the parties.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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