

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William H. Spencer, Referee

PARTIES TO DISPUTE:

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

FLORIDA EAST COAST RAILWAY

W. R. Kenan, Jr., and S. M. Loftin, Receivers

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

"1. Seniority roster of Group 3 employees in the St. Augustine general offices be corrected to show Henry Brayboy as having entered the service October 23, 1928, and that seniority roster be corrected to show Gibson Wright as having entered the service from the date of entering the service after working 720 hours within a continuous period of 180 days subsequent to July 1, 1938, and that

"2. Henry Brayboy and other employees involved in or affected by the Carrier having permitted Gibson Wright to exercise alleged seniority rights on positions covered by the clerks' agreement in the General Offices, be compensated in full for any monetary loss resulting from the Carrier's actions."

EMPLOYEES' STATEMENT OF FACTS: "Henry Brayboy was employed as a cleaner in the General Offices, St. Augustine, on October 23, 1928 and worked continuously in that capacity until the end of April 1931, when he was cut off. He was recalled and given employment as cleaner in the general offices on November 1, 1931, and cut off June 1, 1932, recalled to service November 10, 1932, cut off May 31, 1933, recalled to service October 15, 1933 and cut off May 31, 1934, again recalled to service November 1, 1934, cut off June 9, 1935, recalled October 1, 1935, cut off June 26, 1936, recalled September 1, 1936, cut off June 6, 1937, recalled October 1, 1937, cut off July 1, 1938, account of having been displaced by Gibson Wright. Carrier has accredited Brayboy with seniority as of September 1, 1936.

"Gibson Wright was transferred from other employment in the service of the Railway to position of cleaner in the General Offices on May 1, 1929, but transferred each winter season to position of Stationary Fireman of the General Office buildings, and as he was released from duties of Stationary Fireman each summer, the Carrier permitted him to displace Henry Brayboy.

"On June 12, 1938, Building Superintendent Prosser, addressed the following letter to—

Gibson Wright,
Fireman, Gen. Office Heating Plant,
FEC Railway,
St. Augustine, Fla.

a higher ratio of turnover due to the seasonal character of the traffic of the carrier, and the racial characteristics of the southern negro, it was thought desirable when formulating the seniority rules for this group of employees in the negotiation of the January 1, 1938 agreement, to predicate the establishment of seniority upon two principal points, one the appearance of the individual's name on the list of eligible voters prepared by the Mediator, and the other the serving of 720 hours in a continuous period of 180 days. As set out in the correspondence between the General Chairman of the Brotherhood and the General Supt. of the Carrier, the seniority dates of Gibson Wright and Henry Brayboy were finally established in a manner that differed in no respect from the establishment of seniority dates for other colored employees, with the exception that the name of Gibson Wright was erroneously omitted from the list of eligible voters by the Mediator. There can be no reasonable doubt that if the Mediator had consulted some representative of the Carrier, when preparing this list of eligible voters, about the status of Gibson Wright, as he consulted Carrier representatives about other employees, he would have included the name of Gibson Wright in the eligible list when he had been informed of the fact that Gibson Wright's basic employment assignment was that of a cleaner, and that for a few months each year he was transferred to the higher paid position of heating plant fireman, which situation had existed during a continuous employment period of nearly eight years.

"2. Henry Brayboy, like many other negroes, had a number of terms of short employment with the Carrier, and upon each re-entrance into the service, as other negro laborers, was considered a new employee. Employees in this group were not considered eligible for pension under the Florida East Coast Railway pension system prior to the Federal Railroad Retirement Act, unless the continuity of their employment was unbroken, and each time an employee in that class was laid off in a reduction of force or rearrangement of forces, his employment was considered terminated, and if he later returned to service it was in the status of a new employee.

"3. It is entirely immaterial to the Carrier what position either of these men occupy on the seniority roster of General Office Cleaners, Janitors and Porters, and the Carrier has simply established their respective seniority dates in a manner entirely consistent with the purpose and intent of the seniority rules of the agreement applying to this class of employees, and consistent with the establishment of seniority dates for other employees in the same group.

"The Florida East Coast Railway reserves the right to introduce and examine witnesses in support of its position in connection with all issues in this case, and to cross-examine witnesses who may be introduced by petitioners, as well as to answer any further or other matters advanced by such petitioners in relation to such issues, whether oral or written. All of the matters cited and relied upon by the Carrier, have been discussed with the employees."

OPINION OF BOARD: (1) The Division is of the opinion that the word "service" as used in Rule 3 (f) of the Agreement between the parties must be construed to mean "service in the class or craft" covered by the Clerks' Agreement.

(2) The Division finds that Gibson Wright cannot properly be regarded as having been in a class of service covered by the Clerks' Agreement as of its effective date, March 30, 1937. It finds further that Gibson Wright at no time since his original entry into the Carrier's employment could have been properly regarded as having been engaged in a class of work which later came to be covered by the Clerks' Agreement. The record indicates that during approximately eight months of each year Wright worked as a "stationary fireman," a class of work not now comprehended by the Clerks' Agreement, and that he worked as a "cleaner" only when the former type

of work was not available. In passing it is noted that for the former class of work, Wright received a higher rate of pay than for the latter. In these circumstances, the contention of the Carrier that Wright was a cleaner, and that for seven or eight months in each year he was temporarily released from this class of service and assigned to another class of service is mere rationalization.

(3) The Division finds that Henry Brayboy was on the effective date of the Agreement between the parties, March 30, 1937, in the employ of the Carrier in a class of service covered by the Clerks' Agreement within the meaning of Rule 3 (f). Further, the Division finds that he must be regarded as having had continuous service from October 23, 1928 in a class of service which later came to be covered by the Clerks' Agreement. The Carrier in its submission states that "Henry Brayboy was employed as a cleaner on October 23, 1928, and worked in that capacity until April 30, 1931, when his services were terminated in a force reduction." It is true that from that time down until the date of this dispute, his service was periodically interrupted. It is true that for a short period in the summer of 1931, he actually worked in a different class of service. The record indicates, however, that from November 1, 1931, down until June 30, 1938, Brayboy was engaged in a class of service which is now covered by the Clerks' Agreement. It was through no fault of Brayboy—even during the short period when he worked in a different class of service—that he did not work continuously as a cleaner from the date of his original entry into the Carrier's employment. During this whole period, he must be regarded, both technically and equitably, as an employee of the Carrier in a class of service which later came to be included in the Clerks' Agreement.

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 under Rule 3 (f) of the Agreement the seniority date of Henry Brayboy should have been established as of October 23, 1928; and that the seniority date of Gibson Wright should have been established as of July 1, 1938.

AWARD

(a) The claim is sustained.

(b) The claim is sustained as to wage loss from July 1, 1938.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 7th day of March, 1939.