

**Award No. 1138**

**Docket No. CL-1157**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**I. L. Sharfman, Referee**

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**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 CO.**

**(Guy A. Thompson, Trustee)**

**STATEMENT OF CLAIM:** "Claim of the System Committee of the Brotherhood that the correct seniority date of Albert E. White, Clerk in the Treasurer's office, is January 23, 1939. Also, claim for all monetary loss sustained by employees involved in or affected by the carrier having allowed Mr. White seniority date of July 1, 1922."

**EMPLOYEES' STATEMENT OF FACTS:** "Mr. White entered service of these lines in the Treasurer's office at Houston, Texas, on July 1, 1922, and worked in that office until April 15, 1932.

"Effective April 16, 1932, the Houston and Palestine Treasurer's offices were consolidated and Mr. White went to the Palestine office with his position, and worked there until July 31, 1932, or three and one-half months.

"During the latter part of July 1932, the Treasurer advised Mr. White that his work was unsatisfactory, and on July 31, 1932, following a conference between the Assistant General Manager, Treasurer, Assistant Treasurer, Paymaster, and Mr. White, Mr. White was removed from service.

"Mr. White did not protest being removed from service and was out of service from July 31, 1932, until January 23, 1939, and his name has not appeared on seniority roster since 1932—until one of April 1, 1939.

"During the period July 31, 1932, to January 23, 1939, Mr. White did not bid on vacancies that occurred and took no action whatever to protect his seniority."

K. A. Stone: Proper seniority date February 15, 1930. (Now shown on seniority roster August 29, 1929.)

We are furnishing you this letter in duplicate, and you will please post one copy of letter on Bulletin Board to inform those whose seniority dates have been protested as to what their proper date will be on the new seniority list, which you will make up and submit as soon as possible. In making up this corrected seniority list, it should be made up in date order, and should show the title of each individual, according to position that they occupy at the present time.

(S) W. G. Choate,  
(S) J. L. Dyer."

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"Houston, Texas,  
July 8, 1939.  
File 1125.

Mr. W. G. Choate, General Manager,  
Missouri Pacific Lines,  
Houston, Texas.

Dear Sir:

Referring to conference in connection with seniority of Albert E. White in the Treasurer's Office.

It is our intention to submit this case to the Adjustment Board for a decision and I will write you later regarding joining us in the submission of this case.

Yours very truly,

/s/ J. L. Dyer,  
General Chairman.

cc-Mr. A. B. Camp,  
906 Sylvan Ave.,  
Palestine, Texas."

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"MISSOURI PACIFIC LINES

Houston, Texas,  
July 10, 1939.

Mr. J. L. Dyer,  
General Chairman, B. R. C.,  
Houston, Texas.

Dear Sir:

Your letter July 8, file 1125, having reference to seniority of Albert E. White in the Treasurer's office.

We will join you in submitting the question of seniority of this party to the National Railroad Adjustment Board.

Yours very truly,

/s/ W. G. Choate."

**OPINION OF BOARD:** On the basis of the established practice of the Board, under its rules of procedure of October 10, 1934 which provide for notice of hearing only to the parties to the dispute, and in conformity, furthermore, with the determinations of the Board in Awards 371, 844, and 902 of this Division, the objection that the Board cannot render a proper and lawful award in a seniority dispute over which the Board has jurisdiction, between a labor organization and a carrier subject to the Railway Labor Act, without notice of hearing to individual employees who might be affected by the outcome of the proceeding, is hereby overruled and dismissed.

On the merits of the dispute, the evidence is uncontradicted that under the rules of the operative Agreements of December 1, 1926 and April 1, 1939 the seniority date of Albert E. White is January 23, 1939, as contended for in the claim of the Clerks' Organization. The carrier relies entirely upon the letter of July 7, 1939, signed jointly by the General Manager of the carrier and the General Chairman of the organization, which shows Mr. White's seniority date to be July 1, 1922. While on its face this letter supports the position of the carrier, the letter of the General Chairman dated July 8, 1939, together with the reply of the General Manager dated July 10, 1939, negative such a conclusion, and render the apparent agreement of July 7, 1939 a mere interim arrangement for a tentative seniority roster, with the issue to be subject to final disposition in this proceeding. Both of these letters (July 8th and July 10th) refer to the conference in the Treasurer's Office with respect to Mr. White's seniority which led to the joint letter of July 7th; the General Chairman's letter of July 8th expresses the intention of the organization to submit Mr. White's case to this Board; and the General Manager's letter of July 10th declares the carrier's willingness to join the organization in submitting the question of his seniority to this Board. Neither letter mentions the fact, alleged by the carrier, that his seniority date had been agreed upon by the parties on July 7th, nor is there the slightest intimation by either party that the proposal to submit the issue to this Board constituted in any way a departure from an agreement that had just been made. It is scarcely conceivable that the parties would have written as they did in their letters of July 8th and July 10th, if the joint letter of July 7th had been regarded by either or both of them as definitely establishing Mr. White's seniority date. In these circumstances the dispute must be governed by the Agreements of December 1, 1926 and April 1, 1939; and as already indicated, under the rules of these Agreements Mr. White's correct seniority date is January 23, 1939, in conformity with the claim as submitted. It follows, furthermore, that employees adversely affected by the carrier's use of the erroneous seniority date of July 1, 1922 are entitled to reparation for all monetary loss sustained as a result of this violation of the Agreements.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 seniority date of Albert E. White is governed by the rules of the Agreements of December 1, 1926 and April 1, 1939; that the correct date under these Agreements is January 23, 1939; and that the employees adversely affected by the carrier's use of the erroneous date of July 1, 1922 are entitled to reparation.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 12th day of July, 1940.

**DISSENT TO AWARD 1138, DOCKET CL-1157**

The dissent in this case deals only with the procedure in denying White, whom the petitioners sought to deprive of his accorded seniority, an opportunity to be heard in his own defense.

In this case, as in the cases covered by Awards 844, 902, and 903, the petitioner and respondent carrier waived oral hearing.

The course followed by the carrier members of the Third Division in an effort to secure for White an opportunity to be heard was the same in this case in all material particulars including a protest to the National Mediation Board against the appointment of a referee to sit with the Division and make an award in this case, unless and until White was given notice of hearing, on the grounds that a lawful award could not be rendered without such notice, as indicated by our dissents in the cases covered by Awards 844, 902, and 903.

The procedure in this case is, therefore, wanting in due process for the same reasons stated in the dissents on Awards 844, 902, and 903; hence the decision on the merits is treated here, as in the dissents on those awards, as being of no effect.

(S) A. H. Jones  
(S) C. C. Cook  
(S) R. H. Allison  
(S) C. P. Dugan  
(S) R. F. Ray