

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

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

"(1) The correct seniority date of Mr. R. E. Taylor is and shall be established as September 3, 1925, and

"(2) That Mr. Taylor shall be reimbursed for wage losses sustained since March 1, 1938, as a result of an unsupported and unauthorized correction of his seniority date by Officers of the Carrier."

EMPLOYEES' STATEMENT OF FACTS: "For the proper consideration and determination of this dispute it is hereby stipulated that Mr. R. E. Taylor last entered the service of the Carrier on April 27, 1925, in the capacity of Rodman, a position that was not then and is not now covered by working agreement rules establishing seniority date and rights in the class of clerical employees.

"On September 3, 1925 Mr. Taylor was offered and accepted a position of Yard Clerk on account of position of Rodman having been abolished. Said position of Yard Clerk was then and has continued since that date to be subject to scope and operations of the Clerks' Agreement. Mr. Taylor continued in the service of the Carrier in the capacity of Yard Clerk, either as extra or regularly assigned from September 3, 1925 to March 22, 1932, on which later date he was laid off on account of reduction in clerical forces. Mr. Taylor was restored to active service of the Carrier as Clerk on March 2, 1935 and has remained in active service ever since in a capacity of extra or assigned Clerk.

"Between the dates of July 14th, 1924 and September 1, 1936, the seniority dates and rights of clerical employees were regulated and governed by the rules of an agreement between the Carrier and the Erie System Clerical Association, which Organization was supplanted by the petitioner Brotherhood as of March 6, 1935, as the duly authorized and designated representative of the craft or class of employees of which clerks are a part.

"The two parties to this dispute have been unable to locate copies of seniority rosters issued under the rules of the 1924 agreement for the years 1926, 1927 or 1929. The 1928 seniority roster recorded Mr. Taylor's seniority date as September 3, 1925. The 1930 seniority roster recorded Mr. Taylor's seniority date as March 6, 1926, and the 1931 roster recorded it as March 25, 1926. The 1932 roster shows Mr. Taylor as being furloughed.

"5. The records on which the decision of the Committee in 1928 was based are not now available, and they, together with payroll records, etc., have been destroyed by flood."

There is in evidence an agreement between the parties bearing effective date of September 1, 1936.

OPINION OF BOARD: The question has to do with the relative seniority rights of one Taylor, in whose behalf the claim is presented, and one Kane, both employees of the Erie Railroad Company. The question, in one form or another, has been considered and determined, either by seeming composition, or by the carrier acting on information from one or the other of these employees, or both, over a series of years. The facts, the contentions of the parties and the rules of the working agreement are all set forth above. It seems reasonably clear that Taylor was employed by the carrier at a slightly earlier date than was Kane, but whether his employment was of the kind that entitled him to seniority in the activity in which they are now both recorded, is not clear. Our study of the record leads us to conclude that the carrier was at pains on several occasions to attempt to adjust the rival claims of these two employees. It does not appear that on any such occasion, or at any other time, the carrier was partial to either, or that in its efforts in the matter it proceeded to decision other than upon evidence it was entitled to believe and in good faith. The circumstances considered, we are not disposed to feel that disturbance of the carrier's current determination would be justified.

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 parties to this dispute waived hearing thereon;

That the carrier and the employee involved in this dispute are respectively carrier and employee 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 has not violated the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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