

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
THE DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY**

Wilson McCarthy and Henry Swan, Trustees

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that Mr. Lyle W. Johnson, Store Helper, Store Department, Helper, Utah, be paid a day's pay at rate of 55¢ per hour for each day not permitted to work from February 3rd to February 21st, 1939, inclusive."

There is in evidence an Agreement between the parties bearing effective date of February 1, 1926.

EMPLOYEES' STATEMENT OF FACTS: "Mr. Lyle W. Johnson, Store Helper, Helper, Utah, was, prior to February 3, 1939, assigned to position as Store Helper, Helper, Utah, which assignment was awarded him as a result of bulletin May 29, 1937, reading as follows:

'Bids will be received by the undersigned for position of Store Helper at Helper Store, hours of duty 12:00 midnight to 8:30 A. M., one-half hour lunch period; six nights per week. Rest day to be Saturday. Rate of pay 48¢ per hour as per agreement.

Duties consist of pressing and wrapping grease; waiting on counter; unloading cars, when necessary; cleaning up and other duties pertaining to Store Helper's work. Bids must be in by close of business June 6, 1937.'

"Under date of June 7th, 1937 the following bulletin was posted by Division Storekeeper Mr. C. R. Sleater:

'ALL CONCERNED:

Mr. Lyle W. Johnson, seniority date 3-16-37, is the senior employee bidding on position of Store Helper at Helper, Utah Store, and is hereby awarded this position:

Other bidders on this job were:

C. K. Ernstsen.
Virgil Melton
W. B. Gale.
Paul F. Peterson.
Arthur M. Anderson.
Elbert T. Blackburn.

(Signed) C. R. Sleater,
Division Storekeeper.'

"Mr. Johnson held this assignment until February 2, 1939, at which time he was displaced by Store Helper Ellis who in turn had been displaced by

been, and rightly so, subject to a claim for any time he might have lost. The fact that Cox did not exercise his seniority when he was laid off October 28, 1938, does not in the carrier's judgment prohibit him from thereafter exercising his seniority if and when he is again returned to service and laid off.

"The Carrier denies that Rule 17 has any bearing on this case. This rule permits employes holding regular jobs who are assigned to temporary positions or duties for a period not exceeding six months to retain their seniority standing and at the conclusion of such assignment to return to their seniority district and take the position from which transferred. In other words, this rule has application only to employes who are transferred from one job to another for a period of six months or less. Cox was not transferred from one job to another. He was laid off. Therefore, this rule has no bearing on the instant claim.

"Modified Rule 26 provides in part that employes whose positions are abolished will have ten days from date position is abolished in which to exercise their seniority rights over junior employes in the district. Mr. Cox complied with this rule when laid off January 31, 1939. The fact that he did not care to take advantage of the rule when laid off October 28, 1938, would not prohibit him from taking advantage of same when he was again returned to service in his seniority order on January 16, 1939, and was laid off January 31, 1939.

"During discussion of this case the organization contended that because Mr. Cox was not in service for six months prior to being laid off January 31, 1939, he was on a temporary job of less than six months, therefore, he had no right under the provisions of Rule 17 to displace Johnson. The plain reading of the rule itself does not support such interpretation. There is no record to show, neither was it known when Cox was returned to service on January 16, 1939, that he would not be permanently employed. It would be possible, under the interpretation placed on this rule by the organization, for an employe who had ten or more years seniority to remain idle as result of force reduction, while at the same time an employe in the same group and in the same seniority district with only a week or a month's seniority would be permitted to work. Certainly such an interpretation which would prohibit and deprive a senior man from exercising his seniority by displacing junior employes is obviously unsound, and is in direct conflict with all basic seniority rules."

OPINION OF BOARD: The Division, after considering all of the facts and circumstances of this particular claim and the provisions of the Agreement as the record reflects application thereof, concludes that this claim should be sustained.

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 the claim will be sustained in accordance with the Opinion.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1941.