

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY CO.

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that A. J. Dusek was permitted to exercise seniority displacing rights in the Freight Accounting Department, Galveston General Office, on July 1, 1938, in violation of the rules of the Clerks' Agreement; and

"Claim that C. G. Ganter, H. B. Mellina, I. Leutsch and E. Reynolds shall be compensated in full for wage losses sustained as a result of such improper displacement by Dusek, retroactive to July 1, 1938."

EMPLOYEES' STATEMENT OF FACTS: "A. J. Dusek established seniority in Classes 1 and 2 in the Freight Department Galveston General Office on November 17, 1924. His name appears on the 1938 seniority roster for that department. Copy of roster is attached and identified as Employees' Exhibit 'A.'

"On February 16, 1932, Dusek, who had theretofore occupied position of Hollerith Machine operator in the Freight Department was transferred to a similarly titled position in the Division Accounting Department. The Freight Department and the Division Accounting Departments each constitute a separate seniority district in the Galveston General Office. Dusek was never given a seniority date in the Division Accounting Department and his name has never appeared on a seniority roster for that department. His name has been carried continuously on the roster for the Freight Department.

"On July 1, 1938, he was permitted to exercise seniority displacing rights in the Freight Department on the basis of his seniority date, November 17, 1924, resulting in the displacement of the employees in whose behalf claim is filed.

"There is in evidence an agreement between the parties bearing effective date December 1, 1929. Employees contend the provisions of Article III, Section 15-b thereof are in violation.

'Section 15-b: Employees transferring from one seniority district to another shall forfeit seniority on the district from which transferred and rank from date of last continuous service on seniority district to which transferred.'

CARRIER'S STATEMENT OF FACTS: "A. J. Dusek established seniority in classes 1 and 2 in the Freight Accounting Department of the Auditor's office at Galveston as of November 17, 1924, and his name has so appeared on all subsequent seniority rosters for the department. At that time there were two seniority districts in the Auditor's office, namely, the Freight Accounting Department and the Disbursements Department.

"It is to be noted that the Board allowed from March 19, 1925 until May 1, 1925 for the employees to merely exercise their option, whereas here only 7 days were given. This surely is at least an indication of what is approximately a reasonable period in which to exercise an option. The Carrier respectfully submits that in the present case the honorable Board can do no less than was done in U. S. R. L. B. Decision 3159, and deny the claim now before it.

"The Organization makes further claim that the four employees be compensated for wage losses sustained as a result of improper displacement by Mr. Dusek. The Organization's position in this case is predicated upon the fact that had the displacement occurred prior to May 1, 1938, it would have been proper and without question on their part. The Carrier has shown that the displacement on July 1, 1938 was proper within the agreement of the parties, and, therefore, the employees named have no claim after July 1, 1938, any more than they would have had on May 1, 1938.

"It might be further pointed out that the two months that elapsed while the Carrier was arranging reassignment of personnel redounded to the benefit of the two claimants whose salary was reduced due to displacement by Dusek's reentry into the Freight Accounting Department as they retained the differential during that period.

"If any employee had a grievance it was A. J. Dusek. The grievance alleged by the General Chairman seems to be none other than that Dusek elected, as invited by the General Chairman, to make his choice prior to May 1, 1938, even in the face of the fact that a letter dated April 16, 1938 was withheld from mailing until April 21, 1938.

"Thus, the Carrier has shown that there was an offer, accepted within the time limited, that there was no unreasonable delay in placing the Optionee, that the claimants are entitled to no compensation as there was no improper displacement by Mr. Dusek, and that there is a closely analogous precedent decided in favor of the Carrier. On the basis of the above facts, the Carrier respectfully requests that the honorable Board deny the claim.

"There is present in this case one factor which will prevent the Board from entering a valid award. A. J. Dusek has an interest in this proceeding. His ability to earn a livelihood is thrown into issue by the position of the Brotherhood. It is proceeding not as a representative of A. J. Dusek but in hostility to him, and in derogation of his rights and interests. A. J. Dusek, and not the Carrier, will be the principal sufferer should the Petitioner succeed in repudiating its agreement with the Carrier and Dusek. Dusek, though the recipient of the offer made by the Brotherhood and though in the position of one having accepted that offer within the time limited for acceptance, has not been made a party to this proceeding, although it has for its objective the destruction of the agreement made with him and the rights accorded to him under the arrangement by the Brotherhood with the concurrence of Dusek and the Carrier. Accordingly, unless and until A. J. Dusek is made party to this proceeding and given opportunity to appear, any award that the Board may make sustaining the claim is a nullity. *Nord et al. v. Griffin*, 86 Fed. (2d) 481, certiorari denied, 300 U. S. 673."

OPINION OF BOARD: The record shows Mr. Dusek made his election within the time limit specified in special agreement between the parties and it was through no fault of his that his transfer was not affected prior to July 1, 1938.

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 claim is not supported by the record and will be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of June, 1941.