

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

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

CANADIAN NATIONAL RAILWAYS—CENTRAL REGION

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that the name of Mr. A. Sharpe, who is now, and was employed in the Grand Trunk Western Railroad Traffic Office at Buffalo, N. Y., prior to Mediation Agreement, effective October 1, 1938, should be deleted from the 1940 roster for Clerks, Freight Handlers and Station Employees at Black Rock and Buffalo, N. Y."

EMPLOYEES' STATEMENT OF FACTS: "Mr. A. Sharpe entered the service of the Canadian National Railways on December 16, 1920, and on February 29, 1928, left the Canadian National Railways to accept employment in the Traffic Office of the Grand Trunk Western Railroad at Buffalo, N. Y. The Grand Trunk Western Railroad is a subsidiary of the Canadian National Railways.

"Prior to December, 1934, the Company's employees in the Freight Office, Freight Shed, Yard Office and Station at Black Rock and Buffalo, N. Y., were covered by an agreement with another organization, and said agreement included the entire Canadian National Railways in Canada as well as a few border points in the United States. The aforementioned employees at Black Rock and Buffalo, N. Y. held seniority rights over the St. Thomas Division of the Railroad.

"On December 1, 1934, the Company's employees at Black Rock and Buffalo, N. Y., changed their organization affiliation. Consequently, they lost seniority rights over the St. Thomas Division, and from that date on held seniority rights only to positions at Black Rock and Buffalo, N. Y.

"There is in evidence a Mediation Agreement, effective October 1, 1938, and the rules thereof read:

'Article 3.

"(a) There shall be one seniority group for all employees. The former seniority groups, namely, (1) Clerical Forces and (2) All Others, shall be combined. The employees shall hold seniority rights to all positions, provided however that employees with seniority rights prior to January 1, 1933, shall be accorded preference rights to appointments to positions which were included in the former seniority group in which they first held seniority, such group to be indicated by a designating mark placed on the seniority list against the names of such employees.

"The word 'Railway' as used in Article 3, Clause (c) of the agreement dated October 1st, 1934, has never been interpreted to mean 'Canadian National Railways—Central Region,' nor was it ever intended that it should be so interpreted.

"Therefore Sharpe, who is employed at Buffalo, is an employee of the Canadian National Railways and his name should be continued on the seniority roster for Clerks, Freight Handlers and Station Employees at Black Rock and Buffalo, and he should continue to accumulate seniority in accordance with Article 3, Clause (c) above quoted."

OPINION OF BOARD: This case involves the seniority rights of an employee who entered the service of the Canadian National Railways on December 16, 1920. March 21, 1928, he accepted employment in the traffic office at Buffalo, N. Y., of the Grand Trunk Western Railroad, which is a subsidiary of the Canadian National Railways.

The Committee for the Employees contend that by this transfer he lost his seniority rights on the roster for "clerks, freight handlers and station employees at Black Rock and Buffalo, N. Y.," who are covered by an agreement effective October 1, 1938. This agreement is with the Canadian National Railways, Central Region. It is not clear from the record whether this name designates a corporate entity or is merely a trade name applying to the operating unit of the railroads in that region. This is not, however, a matter of importance.

It is conceded that the Grand Trunk Western Railroad is a separate corporation and the claim of the Committee is that when this man entered the employ of this railroad his rights to seniority in his previous employment ceased. It is, of course, true that when an employee leaves one railroad and enters the service of another his seniority rights with the first Carrier are gone; and, under ordinary conditions, this is the case even where the second railroad may be a subsidiary of the other. But the agreement between the Carrier and the Employees may provide otherwise and the Carrier contends that the present agreement does just that. Article 3 (c), which it is claimed, covers this situation, reads as follows:

"Employees now filling, or promoted to, positions with the Railway which are not covered by any Wage Agreement, and employees elected as representatives of the employees covered by this schedule (who shall be considered as on leave of absence) will retain their seniority rights and rank and continue to accumulate seniority, provided that same are asserted within thirty (30) days after release from such employment.

"Employees accepting permanent positions covered by other Wage Agreements will be dropped from the seniority list."

The Carrier contends that the purpose of this provision is to protect the seniority rights of an employee who may be transferred to any other position on the Canadian National System, even though with a subsidiary company, so long as that position is not covered by a wage agreement. It is admitted that the position to which Sharpe was transferred was not and is not now covered by any wage agreement.

We must confess that, standing by itself, the language which the parties have used is not clear. Such being the case, the rule of law is well settled that we may look to the surrounding circumstances and particularly to the situation of the parties and to the history of their negotiations to determine what they meant.

We find the following facts.

Insofar as it concerns this problem, the agreement under which Sharpe was accumulating seniority on March 1, 1928, when he accepted his new position, reads as follows:

"Employees promoted from staffs covered by this schedule to positions on other staffs will retain their seniority rights and rank, and continue to accumulate seniority, provided that same are asserted within thirty (30) days after release from such excepted employment. Employees accepting permanent positions covered by other wage agreements will be dropped from the seniority list."

In 1934 the employees in the United States of the Canadian National Railways changed their affiliation and joined the American Brotherhood and a new agreement was negotiated, effective December 1, 1934. The part concerning us here governs "Freight Office, Freight Shed, Yard Office and Station Employees at Black Rock and Buffalo, N. Y." This included the particular group of employees of whom Sharpe was one prior to his transfer on March 1, 1928. It is apparent that the purpose of the rule in the 1928 agreement was to permit the shifting of employees from one position to another on the System without loss of seniority, provided the new positions were not covered by other wage agreements. There could be no other meaning to it when we consider the sentence reading as follows: "Employees accepting permanent positions covered by other wage agreements will be dropped from the seniority lists." The same wording was carried into the agreement which became effective August 1, 1929, Article 3 (b). In the agreement, effective December 1, 1934, the wording was changed. But the modification was, in our opinion, merely for the purpose of clarifying the previous language. In the 1938 agreement this wording is followed without change. Article 3 (c) above.

As we view the evolution of these agreements, it seems to us clear that in all of them the intent of the parties was to provide for the transfer of employees from one part of the System to another without loss of seniority, provided the transfer was not to a position covered by another wage agreement. It is hard to see what else the language could mean for it certainly was not intended to cover the employees who might take a position with another railroad outside the System.

The argument of the Committee for a different interpretation revolves around the fact that the Grand Trunk Western Railroad is a corporation distinct from the Canadian National Railways. As we stated above, however, this is not controlling, if it is clear that the purpose of the agreement is to protect an employee's seniority in spite of a transfer to a position in such a railroad.

It is also called to our attention that this employee was dropped from the seniority roster at the time of such transfer, but it appears that it was the practice to do this. Neither was the failure to include his name on the revised roster dated June 1, 1939, controlling, particularly in view of his demand that it be added when the question was raised as to the effect of its being omitted.

As we view this case, it is not of importance that the Grand Trunk Western Railroad and the Canadian National Railways are treated as separate and distinct Carriers for other purposes, such as collective bargaining and the administration of the Railroad Retirement Act. We are concerned with what the parties intended by this agreement. Nor is it of importance that this employee was paid by the subsidiary company. If the parties notwithstanding these facts intended to protect his seniority accumulated from his original employment, they had the right to do so.

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 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 there was no violation of the agreement in retaining the name of the employe on the roster.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of July, 1941.