

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BERNARD J. KELLEY, ATTORNEY
AS THE REPRESENTATIVE OF CERTAIN
EMPLOYEES IN THE CAR SERVICE DEPARTMENT**

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "The claim is that those employees of the Pennsylvania Railroad who were transferred to the office of Superintendent of Car Service in 1932 from the offices of Chief of Freight Transportation, Superintendent of Freight Transportation, Superintendent of Passenger Transportation and Superintendent of Stations and Transfers should now be accorded clerical seniority in the Car Service Department from the date they were originally employed in that Department."

**Submission of Bernard J. Kelley, Attorney,
As the Representative of Certain Employees
in the Car Service Department**

STATEMENT OF FACTS: "The petitioners, all of whom were originally employed in the Car Service (then Car Record) office of the Pennsylvania Railroad, at Philadelphia, have had continuous service with the Railroad for periods ranging from 49 years to 24 years.

"The Car Record office wherein these men were employed performed two kinds of work, car record work and 'over and short' work. The former consisted of keeping a permanent record of the movements of each car, passenger and freight, throughout its lifetime. The latter consisted in the tracing of the way bills that were sent out in connection with the shipment of freight.

"In May 1916, the Railroad decided to create a new department to take care of this 'over and short' work. Thus was created the Department of Stations and Transfers. The car record work remained in the same office, but its name was changed to the Car Service Department.

"The men who were transferred at that time continued to do exactly the same work, the only difference being that they were now under the Superintendent of Stations and Transfers instead of the Superintendent of the Car Record.

"This state of affairs continued until 1932, with certain changes in the operation of the Railroad that are not relevant to the present issue.

CONCLUSION

"Thus the Carrier has shown:

"1. An award in favor of the Claimants may not be issued unless the individuals who would be adversely affected thereby are first notified of the proceeding and given an opportunity to be heard; and

"2. The Claimants are not entitled under the applicable agreement to relative positions on the roster more favorable than those with which they are presently credited.

"In the light of the foregoing it is respectfully submitted that the claim herein should be dismissed."

OPINION OF BOARD: The claimants here involved are clerical employees of the Pennsylvania Railroad Company. At the time that each of the claimants entered the employment of the Carrier, no contract or agreement existed between them and the Carrier covering their seniority rights. The individual contracts of employment of these individual claimants established in them no seniority rights.

Prior to 1920, no contract or agreement existed between the Carrier and its clerical employees regarding seniority.

In 1916, or shortly thereafter, claimant employees were transferred to other departments from the Carrier's Car Record Office which, on May 1, 1916, was split into two divisions, namely, the office of the Superintendent of Car Service and the office of the Superintendent of Stations and Transfers.

By agreement effective as of May 16, 1927 by and between E. T. Kennan, Superintendent of Car Service, the duly authorized agent of the Carrier, and H. T. Clasen, G. L. McKeon, and R. L. Weldie, the elected representatives of the Clerks in the Car Service Department, it was provided among other things as follows:

"In the case of equal fitness and ability, the employee senior in service shall be given the position.

"The date of entering service shall be the latest date of entering service in the Superintendent of Car Service Department.

"Length of service shall be the actual time carried on payrolls of the Superintendent of Car Service Department with pay following latest date of entering the service. Where the employment does not begin on the first of the calendar month computation will be made from the first of the following month and no deduction is to be made for any continued absence without pay of less than one month commencing with the date of absence."

In 1932, or shortly thereafter, claimant employees were transferred from other departments of the Carrier to its Car Service Department.

The collective contract entered into between the Car Service Department employees and the Carrier, effective May 16, 1927, which is now in full force and effect, specifically provides that seniority shall date from the latest date of entering service in that department.

By an exchange of letters dated October 15, 1936, between the duly authorized representatives of the Carrier and the duly authorized representatives of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, the Carrier agreed to and did recognize as the representative of its clerical, office, station and storehouse employees, including the claimants herein, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees. This

recognition was expressly stated to be without waiving the provisions of existing schedules of regulations then effective and therefore continued in full force and effect the agreement which became effective May 16, 1927.

Printed copies of the letters dated October 15, 1936 were posted on each of three bulletin boards in the Car Service Department immediately after October 15, 1936, and remained posted on these bulletin boards at least until January 1, 1939.

Seniority rights of employees of a Carrier exist only by virtue of a contract or agreement between them and the Carrier. In the absence of such contract or agreement such employees have no seniority rights, and any privileges resulting from length of service, apart from those created by contract or agreement, were the result of acts of grace of the Carrier.

Under the agreement which became effective May 16, 1927, claimants are entitled only to the seniority rights which have now been accorded them by the Carrier. Claimant employees have established no seniority or other rights which would entitle them to the relief prayed for.

Accordingly, the claim should be denied.

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 there has been no violation of the current agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of September, 1941.