

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

1. The Carrier violated the current Clerks' Agreement when it called junior employees for work at the Great Northern Freight House, St. Paul, Minnesota, when senior employees were not working but were willing to work and available.

2. That the senior employees who were not called in order of their seniority be compensated for all time lost account failure of the Carrier to return them to service in order of their seniority.

EMPLOYEES' STATEMENT OF FACTS: On October 25th and 26th, 1940, Lawrence Andrews, with seniority date of April 4th, 1938, was available and was not called. On same date Henry Polnau, with seniority date of July 11th, 1938, and junior to Lawrence Andrews was called as a Trucker.

On January 3rd, 1941, Edward O'Connor, seniority date July 6th, 1937, F. D. Adams, seniority date August 23rd, 1937, and E. Groeber, seniority date March 28th, 1938, were available and not called. On the same date E. Kipka, D. Golden and K. Bantigan, all with seniority dates of December 18th, 1940, and all junior employees, were worked as Truckers.

On January 18th, 1941, J. Schwartzbauer, seniority date March 28th, 1938, was available and not called. On same date E. Kipka, seniority date of December 18th, 1940, was worked as a Trucker.

On January 8th, 9th, 10th, 28th and 31st, and on February 4th, 1941, Edwin Johnson, seniority date March 28, 1938, was available and not called. On the above dates junior employees were worked as follows:

Jan. 8,	Fred Bramscher,	seniority date	3-20-38,	was worked
" 9,	"	"	"	"
" 10,	Jos. Schwartzbauer,	"	"	"
" 28,	"	"	"	"
" 31,	Gerald Smith,	"	4- 4-38,	"
Feb. 4,	Jos. Schwartzbauer,	"	3-28-38,	"

All the employees named are regularly assigned to the subdivisions of the extra list maintained at St. Paul Freight House.

POSITION OF EMPLOYES: There exists an agreement bearing the date of October 1st, 1925, between the Great Northern Railway Company and the Brotherhood of Railway Clerks which reads in part as follows:

to Class (3) positions, which will merely be posted locally, after which it is subject to claim by the senior employe applying. Rule 19 (c) then makes such method applicable to all such vacancies, whether permanent or temporary.

Then, by reference to Rule 64 quoted, the vacancies here in question are definitely allocated as Class 3 jobs.

The Carrier has herein referred to Rule 44, which is the rule covering short hour service in emergencies beyond the control of the Carrier, and provides for a minimum of two hours, actual time up to four hours, and a minimum of eight hours for any service in excess of four hours. By its wording, as quoted, such rule does not apply to fluctuating work which cannot be handled by the regular force, and such rule is not applied to the men used for temporary service as here claimed. In each case, these additional men are used for a minimum of eight hours. The rule is quoted for the purpose of showing that these additional men are definitely removed from the category of regular employes, and are not subject to the restrictions as to filling thereof which apply to regular employes. Logically, therefore, under the other rules quoted, this fluctuating service for additional employes, with a minimum of eight hours' work per day, is not subject to bulletin, nor to call by the Carrier of a specific extra list employe, but are subject to claim by extra list employes, in the order of their seniority. The Carrier has handled the entire matter in exact accordance with such rules.

It is also only fair to add that a revision of the Clerks' schedule, including all the rules quoted, is now in process of negotiation, in which the employes have invoked the services of the Mediation Board, but to which no Mediator has, as yet, been assigned. Such failure, as yet, to assign a Mediator is understood by the Carrier to be the result of a request, or an understanding, between the Employes' representative and the Mediation Board. The present claim, therefore, would appear to be an attempt on the part of the Employes to prejudice the Mediation proceedings as to a change in such rules, by securing an Award from this Board contrary to the plain wording and mutually understood application of the existing rules. In other words, fearing the result of Mediation, the employes seek this Board as a means of securing a change in working conditions contrary to the provisions of the Railway Labor Act.

Inasmuch as the schedule rules quoted by the Carrier are fairly definitive and clear, and are confirmed in the actual application by a continued mutual practice of some fifteen years, the Carrier submits that a contrary Award by this Board is not only entirely outside this Board's jurisdiction, but is upon its face an attempt to evade the responsibilities of the Employes' organization under the Railway Labor Act, to which this Board cannot consistently lend its countenance.

OPINION OF BOARD: The employes here involved are laborers (class 3) on the extra list maintained at the St. Paul freight house.

In addition to the regularly assigned trucking crews, extra laborers are used to augment the regular force when the volume of freight makes additional force necessary, and to fill temporary vacancies occasioned by assigned employes being absent from duty.

The Employes state that at other points, such as Seattle, Spokane, Havre, Great Falls, Minot, Grand Forks and Superior, employes on the extra list, set up under the provisions of Rule 19, are called for work in their seniority order and are not required to be present at the regular starting time in order to secure employment, whereas at St. Paul it has been the practice to give the senior extra list employes, who showed up, such work as was available.

Rule 19 (c) provides temporary or short vacancies not subject to bulletin will be filled by senior unemployed employes from the extra list on the district where vacancy occurs, etc., and extra list employes in class 3 will work in order of seniority standing.

Rule 19 (c) also provides that all vacancies in class 3 will be posted and filled in accordance with Rule 7. Only the second paragraph of Rule 7—Bulletins applies to positions in class 3. It provides in part that notices of vacancies will be posted in the immediate station and the senior qualified applicant assigned.

The intent of Rule 19 (c), except as provided by the second paragraph of Rule 7, is that extra list employees of class 3 will work in order of seniority standing at the immediate station involved. The record shows that the purpose of the rule has been accomplished at points other than St. Paul by means other than a requirement that extra list employees show up or present themselves for work.

In view of the facts and circumstances of this case, the Board is of the opinion that the available means at St. Paul to give effective application to the agreement, in respect to these extra list employees, as is done elsewhere on the system, should be utilized and put into effect at St. Paul. They should be worked in order of seniority standing and should not of necessity be required to be present at the regular starting time in order to secure work.

This interpretation will be effective 20 days after the date of this award.

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 the interpretation set forth in the Opinion shall be effective 20 days after the date of this award, with no retroactive effect prior to that date.

AWARD

Claim sustained to extent stated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of April, 1942.