

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

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

UNION BELT OF DETROIT

(WABASH—PERE MARQUETTE—PENNSYLVANIA)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that Mr. John Keirce, Yard Clerk, assigned to position at Produce Terminal, Detroit, Michigan, rate \$6.45 per day, (now \$7.17 per day in accordance with the provisions of the National Wage Agreement, signed at Washington, D. C., January 17, 1944) be restored to his position and reimbursed for all wage loss sustained, account having been removed from the position effective April 6, 1943, in violation of the rules of the Clerks' Agreement.

EMPLOYEES' STATEMENT OF FACTS: Mr. Keirce entered the service of the carrier, March 5, 1942, as Zone Clerk, which position is under the supervision of the Secretary of the Operating Committee, and occupied the position until July 5, 1942.

On June 22, 1942, a position of Yard Clerk in the Joint Agents' office was advertised for bids under bulletin P. T. 9, for which Mr. Keirce made application and was assigned under bulletin P. T. 10. Mr. Keirce actually started work on the position at 12:01 A. M., July 6, 1942 and continued to occupy the position up to and including April 6, 1943.

The Local Committee was advised on March 22, 1943, that Mr. Keirce could no longer continue on his present position after April 6, 1943, account the bond held by the St. Paul Mercury Indemnity Company on that part of his service to the Wabash Railroad was being cancelled.

Mr. Keirce was removed from his position effective with the close of his assignment on April 6, 1943, and is still being held from service.

POSITION OF EMPLOYEES: Rules No. 5, No. 10, No. 11, and No. 17, of the Clerks' Agreement read as follows:

"Rule No. 5. The application of new employees shall be approved or disapproved within sixty (60) days after the applicant begins work. In the event of the applicant giving false information, this rule shall not apply."

"Rule No. 10. Vacancies and new positions will be bulletined showing classification and rate of pay for a period of five (5) days in each seniority district and assigned within ten (10) days after expiration of the bulletin to the senior qualified applicant."

OPINION OF BOARD: The controlling facts in this case are: John Keirce entered the service of the Carrier on March 5, 1942, and occupied the position of zone clerk until July 6, 1942. During this period he was covered by a bond protecting the Union Belt of Detroit; he also applied to the Guarantee Company of North America for an additional bond of \$1,000 for protection of the Pere Marquette which he received, both of these bonds remaining in force until the expiration of his assignment as zone clerk for the Belt.

On June 22, 1942, a position of yard clerk in the Joint Agents' office was advertised for bids and Claimant made application and was assigned under bulletin, starting work on the position July 6, 1942, and continued to occupy the position up to and including April 6, 1943.

On July 6, 1942, it being necessary that he furnish bond, Claimant filled out three applications for bonds, each in the amount of \$500.00; one application was with the St. Paul Mercury Indemnity Company and two with the Guarantee Company of North America. He went to work immediately upon the position, the Carrier having an agreement with the bonding company that the bonds were to become effective with the signing of the application until they were disproved or cancelled by the bonding company.

On March 22, 1943, better than eight months subsequent to the date the applications for bonds were made, Claimant was informed that the St. Paul Mercury Indemnity Company had cancelled its bond covering the portion of his service to the Wabash; as a result the Carrier issued an order that Claimant could no longer continue in his present assignment after April 6, 1943.

The record is clear that no charges of any kind were made against this Employee. There are no charges that he did not perform all of his duties as a yard clerk satisfactorily or that he was not qualified for the position. The sole reason he was dismissed was the fact that one of the bonding companies had cancelled his bond without giving any reason whatsoever for so doing, this in face of the fact that another bonding company had written a similar bond.

It is the contention of the Employees that, under Rule 17 of the Agreement, the essential part of which reads as follows:

"An employee who has been in the service for more than sixty days shall not be disciplined or dismissed without investigation, at which investigation he may be represented by an employee of his choice,"

the Carrier had no right to discharge Claimant and in so doing it violated the Current Agreement. It is conceded here that no investigation was held, no charges were filed and that none were made against this employee.

It is the Carrier's contention that the cancelling of the bond which the Employee was required to give was something over which it had no jurisdiction. While the Carrier has the right in cases of this kind to require that a bond be given, it is bound by the provisions of the agreement between the Employees and this Carrier and one of those provisions is Rule 17 which provides that an employee who had been in the service for more than sixty days shall not be dismissed without an investigation. It was the duty of the Carrier, therefore, to ascertain whether or not the bonding company would carry the bond on this Claimant for which application was made. The Carrier had a period of sixty days in which to do so. It did not do it. Better than eight months transpired and under the rules of this Agreement, this Claimant could not then be dismissed except in compliance with Rule 17.

The record shows that on May 5, 1943, Claimant became employed and is still employed by the Pere Marquette Railroad Company. Claimant is, therefore, only entitled to what he lost—to wit, the difference in pay between April 6, 1943, on which date he was removed from his position and May 5, 1943, on which date he accepted employment with another railroad.

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 the Carrier violated the Agreement in its discharge of the Claimant and that Claimant is entitled to the loss sustained by him between April 6, 1943, and May 5, 1943, the date on which he became employed by the Pere Marquette R. R.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1945.