

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(TEXAS AND NEW ORLEANS RAILROAD COMPANY)**

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood that Miss LoOwida Murphy, Clerk, San Antonio Freight and Yard Office Seniority District, be given and credited with seniority date of June 22, 1943.

EMPLOYES' STATEMENT OF FACTS: Rule 3 of the Agreement currently in effect reads as follows:

"SENIORITY

RULE 3. SENIORITY DATUM. Seniority begins at the time employee's pay starts on the seniority district and in the group to which assigned.

Where two or more employees enter upon their duties at the same hour on the same day, employing officer shall, at that time, designate respective rank of such employees.

Employees promoted from one group to another (as established in rule 1) will rank in such group from date of transfer thereto, but will retain and continue to accumulate seniority in the group from which promoted. Employees having established seniority in more than one group will be required to exhaust seniority rights in the higher group before being permitted to return to the lower group."

This is the claim of Miss LoOwida Murphy that she be given seniority beginning at the time at which her pay started as a Clerk in the San Antonio Freight and Yard Office Seniority District as per Rule 3.

Miss LoOwida Murphy was employed as a Yard Clerk in the Freight and Yard Office Seniority District at San Antonio and began work as such at 10:00 A.M., June 22nd, 1943. Her pay as such began at that hour on that date. She was removed from service August 14th, 1943 on the basis that her application for employment had been disapproved. Miss Murphy immediately and personally undertook to establish that there was no proper basis for the disapproval of her application for employment and "presented sufficient assurance to convince the General Yardmaster that she would be a satisfactory employee." Thereupon, she was restored to the service and permitted to resume her duties as a Yard Clerk September 23rd, 1943, and has remained in the service continuously to date.

date and date of all other service rights begins on the date the employee's pay starts in the seniority district where the application for re-employment has been made and approved and prior service is not accredited to such an employee when that prior service was terminated by disapproval of application within the probationary period as set forth in Rule 22, Article III of the Agreement.

CONCLUSION: The Carrier has shown that Miss LoOwida Murphy made application for employment on June 20, 1943, and began service on June 22, 1943, and during the sixty (60) day period contemplated in Rule 22 of the Agreement, that application was disapproved on August 13, 1943, and Miss Murphy was removed from the service. There was no grievance or appeal made by Miss Murphy or the Organization within the time stipulated in Rule 26 of the Agreement following the disapproval. The next contact with Miss Murphy was an application for re-employment on September 20, 1943. She filed a new application with the hope of being re-employed and with a complete and distinct understanding that she would re-enter the service as a new employee. The application was accepted and during the sixty (60) day period following the beginning of work on that application for re-employment, she was found suitable in all respects to be retained in the service and has continued since as a regular employee and she was accredited with seniority based upon the application for re-employment and the beginning of work under that application and contract of employment with a date of September 23, 1943, which is a proper seniority date under the rules, as set out in Rule 3 of the Agreement. The Organization does not find support in the Agreement for their contention that Miss LoOwida Murphy be given a seniority date of June 22, 1943. No claim was ever made by the individual and handled in the usual and ordinary manner contemplated by the Agreement and the Railway Labor Act.

Every effort has been made to set out all known relevant argumentative facts, including documentary evidence in exhibit form.

Wherefore, premises considered, the Carrier respectfully requests that the contention of the Organization be in all things denied.

OPINION OF BOARD: Claimant made application for employment by this Carrier on June 14, 1943, as a Clerk in the Yard Office. She began service and her pay started on June 22, 1943, pending the approval or disapproval of her application. On August 13, 1943, a date within the 60-day period granted by Rule 22, current Agreement, for the approval or disapproval of applications for employment, the Carrier disapproved Claimant's application and she immediately left the service. On September 20, 1943, Claimant filed a new application for re-employment at that time. This application was accepted and subsequently approved. She commenced work and her pay started on September 23, 1943. Carrier fixed her seniority date as of September 23, 1943. The Organization asserts that it should be as of June 22, 1943.

It is clear to us that Claimant's acceptance as an employee under her application dated June 14, 1943, was conditioned upon its approval within 60 days, as provided by Rule 22. When the application was disapproved within that period, whether with or without a justifiable reason, her relationship with the Carrier terminated without the accrual of any rights whatever under the contract. Consequently, she acquired no seniority rights by virtue of her conditional employment. Neither did she acquire any rights under the Investigation Rule. Award 5256, First Division, and Award 3152, Third Division. She did acquire these rights when she went to work on September 23, 1943, under the application dated September 20, 1943, it having been subsequently approved. Claimant's seniority date was correctly fixed by the Carrier as of September 23, 1943.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 11th day of April, 1947.