

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**

THE DENVER AND SALT LAKE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier has violated, and continues to violate, the Clerks' Agreement, effective March 1, 1942, when it published roster showing Mr. Cecil G. Murphy, Clerk, Craig, Colorado, with seniority date of August 27, 1935, instead of September 16, 1945.

EMPLOYEES' STATEMENT OF FACTS: Cecil Glenn Murphy entered the service of the Denver & Salt Lake Railway Company as Station Helper at Craig, Colorado, which position was subsequently reclassified as "Station Clerk". On August 28, 1945, Mr. Murphy verbally resigned to the Trainmaster (his immediate superior) and advised that his resignation would be effective August 31, 1945.

Mr. Murphy did not report for work September 1, 1945, and under date of September 13 Bulletin No. 1746 was posted calling for bids on position of Station Clerk at Craig, Colorado, which was the position Mr. Murphy left on August 13. This bulletin was cancelled by Bulletin No. 1746-A, dated September 17 and Mr. Murphy returned to service on September 16, 1945.

Under protest by the organization Bulletin No. 1755 was issued on September 26, 1945:

"ALL CONCERNED:

"Bids will be received by the undersigned until 9:00 A.M., October 2, 1945, from applicants for a vacancy in a position in Seniority Division "B", Group 1, covered by the current Agreement with Clerical, Station and Storehouse Employees, described as follows:

"Position:

Position No. 4, Station Clerk, Craig.

"Qualifications:

Ability to receive and deliver freight, baggage, mail, etc., in and out of cars and warehouses; check and seal cars in yard; and perform miscellaneous station clerical work.

"Rate of Pay:

"Hours of Service:

Eighty cents (80c) per hour, \$6.43 per day.

8:00 A.M. to 5:00 P.M. with one hour for lunch, daily except Sundays and Holidays."

A. L. Johnson,
General Superintendent.

stances, involving the many years previous faithful service rendered by Murphy and furthermore in view of the fact that he was entitled to a vacation with pay during the Year 1945, which he had not received, the company canceled Circular No. 1746 by issuing Circular No. 1746-A, dated September 17, 1945, and permitted Murphy to return to duty on the basis of having been absent therefrom on annual vacation."

If you will subscribe to the foregoing statement of facts, I will join you in submitting this case to the National Railroad Adjustment Board. Please let me know what you intend to do about it.

Yours truly

/s/ A. L. Johnson,
General Superintendent.

Up to the present time nobody has been directly injured by what has taken place. Murphy, the employee directly concerned still fills the same position as he has filled for many years past. However, if the contention of the organization should be sustained his status as an employee would be jeopardized in the event displacement should take place.

The carrier is of the opinion that Murphy may have a parol right to his employment relationship over and above that contemplated by the Agreement of March 1, 1942, which right he may assert in a civil suit for damages. The Adjustment Board may therefore find it in order to give him an opportunity to be heard, particularly in view of the fact that he representation authorized for his class of employees is preceeding against his interests.

The Carrier has no particular stake in this issue, other than the fact that it has spent considerable money over a period of years in developing Murphy into a competent station clerk and it would be difficult to replace him at the present time. However, it is interested in so handling the matter that it may be definitely settled. For that reason it is joining with the Organization in this submission.

OPINION OF BOARD: On August 28, 1945, Cecil G. Murphy was a Station Clerk at Craig, Colorado, with a seniority date of August 27, 1935. On that day he called the Carrier's Trainmaster by telephone and advised him that it was his intention to leave the service of the Carrier on or about August 31, 1945, because of a failure to receive a raise in pay. This information was conveyed to the General Superintendent who advised the Trainmaster to procure a written resignation. On September 1, 1945, Murphy failed to report for work. The Trainmaster called him on the telephone and suggested that he send in a written resignation if he intended to go through with his announced intention to quit the service. Murphy indicated that he would send it in. On September 13, 1945, Murphy not having reported for work and no written resignation having been received, the General Superintendent considered the position vacant and bulletined it as such. Before the expiration of the bulletin, Murphy made it known that he repented his action and desired to go back to work. He returned to service on September 16, 1945. The bulletin was cancelled, which action was protested by the Organization. Carrier, thereupon, bulletined the position again on October 1, 1945, and Murphy protested its issuance claiming that he was still the occupant of the position. No bids were made for the position and Murphy was assigned the position. It is the contention of the Organization that Murphy's seniority date should be September 16, 1945, instead of August 27, 1935, as fixed by the Carrier. A general notice of the hearing on the claim has been given to all the parties interested, pursuant to Award 3368.

The evidence is clear that Murphy resigned his position as of September 1, 1945. He had previously announced his intention to resign on August 31, 1945. He failed to report for work on September 1, 1945, and for fifteen days thereafter. He indicated on September 1, 1945, after failing to report

for work, that his written resignation was forthcoming. He accepted employment elsewhere. The Carrier on September 13, 1945, considered the position vacant. We think the conduct of Murphy amounted to a resignation and that the Carrier on September 13, 1945, correctly so determined. This terminated all rights, including seniority, that Murphy had with the Carrier. The attempts of the Carrier to restore these rights by treating Murphy as absent without leave and crediting the time he was absent to his vacation period with pay, is of no avail to change the status which Murphy himself had created. Under the rules, the Carrier cannot restore seniority to one who has resigned his position.

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 parties waived oral hearing thereon;

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 violated by the Carrier.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1947.