

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James M. Douglas, Referee

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**PARTIES TO DISPUTE:**

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

**NORTHERN PACIFIC RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that:

(1) The seniority date of W. J. Koski, Clerk at Laurel, Mont., appearing on the Yellowstone Division Class "A" seniority roster as January 8, 1943 should be changed to August 16, 1944;

(2) Mrs. C. C. Cook should have been permitted to exercise her seniority rights and displace Mr. Koski on September 22, 1946;

(3) The Carrier should now pay Mrs. Cook for all loss in earnings caused by the refusal of her request to displace Mr. Koski, retroactive to September 22, 1946.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. W. J. Koski entered the service of the Northern Pacific as a clerk at Laurel, Montana, on January 8, 1943. On May 5, 1944 he was notified by his draft board to appear for a pre-induction physical examination. On May 10, 1944 he was notified that he had been placed in Class 1-A. On or about May 21, 1944 he was granted leave of absence to enter the armed forces. Not being called for immediate service, he obtained work with Grant-Smith Co. at Blum, Mont., working for this concern from June 28, 1944 until August 15, 1944. On or about August 15, 1944 he contacted his former employer, the Northern Pacific Ry. Co. at Laurel, Mont. and was instructed to report for work. This he did on August 16, continuing to work for the Railway Company until January 15, 1945 when he was again granted military leave and was inducted into the armed forces on January 20, 1945. Upon his release from the armed forces, Mr. Koski reported for service with the Northern Pacific and went to work on September 12, 1946.

On September 20, 1946, Mrs. C. C. Cook, having a seniority date of August 10, 1943, asked to be allowed to displace Koski, she having previously been displaced. This request was denied.

**CARRIER'S STATEMENT OF FACTS:** Mr. W. J. Koski now has a Class "A" seniority date on the Yellowstone Division as of January 8, 1943. Immediately prior to May 5, 1944, Mr. Koski occupied a position of yard clerk at Laurel, Montana, on the Yellowstone Division.

as before stated, an employe performing military service under that Act does not have his seniority impaired by reason of outside employment. Consequently, as the Selective Training and Service Act was the proximate cause of Mr. Koski leaving his position of yard clerk the Carrier respectfully submits that Rule 50 would not operate to result in the forfeiture of Mr. Koski's seniority under the facts in this particular case.

Mr. Koski returned to the service of the Railway Company on August 16, 1944, and took service on the basis of his seniority date of January 8, 1943. On January 1, 1945, and again on January 1, 1946, seniority rosters were published showing Mr. Koski's seniority date as of January 8, 1943. No question was raised by the Employes in August, 1944, about Mr. Koski's right to perform service on the basis of his January 8, 1943, seniority date. In fact, no question was raised by the Employes about Mr. Koski's seniority date until September 18, 1946, more than two years after August 16, 1944, when he took service on the basis of his January 8, 1943, seniority date.

The Carrier has shown that the Selective Training and Service Act of 1940 was the proximate cause of Mr. Koski leaving his position of yard clerk on May 21, 1944; that an individual leaving his position because of the operation of that Act does not impair his re-employment rights by engaging in other employment; and that consequently Mr. Koski did not forfeit his seniority when taking service with the Grant-Smith Company in July and August, 1944. The claim should, therefore, be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The decision in this case involves the application of the Selective Training and Service Act of 1940 ("G.I. Bill of Rights") to the seniority rights of an employe inducted into Military service.

W. J. Koski established seniority as a Clerk at Laurel, Montana on January 8, 1943. On May 5, 1944 he was called for examination by his Draft Board. On May 10 he was put in Class 1-A, instructed by his Draft Board he would soon be inducted, and advised to arrange his personal affairs. On May 21, 1944 he was granted a leave of absence to enter the armed forces. Being married and having one child he had arranged for his family to live at Joliet, Montana while he was off to War. He moved them there and awaited induction. While waiting he obtained temporary work as a laborer for about forty days. His induction being further delayed he returned to his position with Carrier on August 16, 1944, where he remained until January, 1945, when he was inducted into the armed forces where he served for about twenty months, returning to work for the Carrier on September 12, 1946.

The question for decision is whether Koski lost his original seniority date of January 8, 1943 when he accepted temporary employment at Joliet in June 1944 while awaiting his call to service after being placed in Class 1-A.

The Agreement of August 15, 1922, Rule 50, states:

"Employes on leave of absence, accepting other employment without the permission of the Superintendent, Storekeeper, Shop Superintendent or designated official in general offices at Saint Paul and Seattle, approved by Division Chairman, will be considered as having left the service."

Under this rule accepting other employment while on leave of absence is considered as leaving Carrier's employment which would forfeit seniority. But we do not believe such rule was intended to apply to an employe on leave of absence to enter military service. If so, every employe who was called into service would forfeit his seniority under this Rule.

Section 8 (c) of the Selective Training and Service Act provides that a returned veteran shall be considered as having been on leave of absence during his period of training and service, and shall be restored to his position without loss of seniority. Limiting the application of this Act to the precise period of time a person was actually in the service, as Claimant would do

here, would be too strict a construction and contrary to the very intent of the Act. Surely the "period of training and service" as used in the Act was intended to include the time required to report for service and the time required to return home after discharge from service. It was a common, and no doubt a necessary, practice for Draft Boards to have men assembled so they could be sent to induction centers without delay. Thus the men about to be called were required to be ready to leave on short notice. This was the situation Koski found himself in, not from his own voluntary action, but because of orders from his Draft Board. Therefore, the provisions of the Act should be held to apply to him from the time he first left his position with Carrier at the direction of his Draft Board on May 21, 1944, and not the later date in January, 1945 when he was actually inducted. Rule 50 must be considered as being modified by the Act.

Under the Act Koski retained his seniority date of January 8, 1943. Thus the claim must 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 employes involved in this dispute are respectively carrier and employes 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 did not violate the Agreement.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 19th day of April, 1948.