

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA
RAILWAY COMPANY**

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

(a) That the Carrier violated Agreement rules when it failed and refused to assign Frank Yorga, Storehelper, St. Paul Shops, to vacancy on Janitor Position No. 15, rate \$9.53 per day, St. Paul Shops Mechanical Superintendent's Office, with retention and continued accumulation of seniority in the district and on the roster from which transferred, and

(b) That Carrier now assign Storehelper Yorga to Janitor Position 15 with seniority date of November 6, 1947 on St. Paul Shops Mechanical Department Class 2 roster, and

(c) That Carrier now reimburse Storehelper Yorga and all other Store Department employees affected thereby from November 6, 1947 and continuing, for the difference between what they were compensated and what they would have earned had Storehelper Yorga been assigned to Janitor Position vacancy in accordance with Agreement Rules.

EMPLOYES' STATEMENT OF FACTS: Effective November 6, 1947, position No. 15 of Janitor, rate \$9.53 per day, 8 hours daily except Sundays and Holidays, office of Superintendent—Motive Power and Machinery, St. Paul Shops, became vacant due to illness of V. Faser, assigned incumbent.

Janitor Faser held seniority date of May 22, 1934, on St. Paul Shops Mechanical Department Class 2 roster. Copy of 1947 roster attached hereto and made a part hereof titled "Employees Exhibit A."

Under date of December 7, 1942, Frank Yorga, Storehelper, rate \$1.09 per hour, with seniority date of October 2, 1924 on St. Paul General Store Class 2 seniority roster, submitted written application to W. P. Buckley, Shop Superintendent, St. Paul Shops, for assignment to janitory position No. 15, if and when same became vacant, this to confirm verbal application. Copy of application attached hereto and made a part hereof titled "Employees Exhibit B."

Again under date of November 14, 1947, Storehelper Yorga advised Mr. R. T. Champion, now Shop Superintendent, that he understood Janitor Faser was off duty account illness and made application for vacancy. Copy attached hereto and made a part hereof titled "Employees Exhibit C."

Board a case wherein the Railway Company has shown that the proper rate of the position is \$8.21 per day.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant Yorga, an employee under the Clerks' Agreement, filed an application for Janitor Position No. 15 as early as December 1942, in anticipation of a vacancy in the position at some future date. Claimant again stated his interest in the position on November 14, 1947, the position having become temporarily vacant on November 6, 1947, due to the illness of the assigned incumbent. Martin Gisch, Carpenter Helper, holding seniority under the Shop Craft Agreement, but without seniority under the Clerks' Agreement, was temporarily assigned to the Janitor position in question. The incumbent died on November 18, 1947, and because the Carrier failed to bulletin the position promptly in accordance with Rule 10 of the Clerks' Agreement, Petitioners requested that it do so. A vacancy bulletin was issued on December 11, 1947, and Claimant made application for the position on December 12th. The position was awarded to Martin Gisch; Claimant contends that it was done so in violation of Rule 18 of the Clerks' Agreement. Rule 18 is as follows:

"Rule 18. Employees filing applications for positions bulletined on other districts or on other rosters will be given preference over non-employees."

Claimant, who held seniority under the Clerks' Agreement, though not in the district in which the position was located, contends that Gisch had never acquired seniority under the Clerks' Agreement, and that for the purposes of Rule 18 Gisch should be considered a non-employee. This Board believes that the Carrier violated the spirit of the Agreement in giving Gisch seniority under the Clerks' Agreement from the time that he first filled the temporary vacancy. The Record shows that when the Carrier placed Gisch on the position here in question it permitted him to retain his seniority rights under the Shop Crafts Agreement. Award 1244 of this Board held that a person whose name appeared on seniority rosters under two different Agreements could not continue to hold seniority rights on both rosters, but could remain on one roster only. Shortly after Gisch was awarded Janitor Position No. 15 under the bulletin of December 11, 1947, he reverted to his former employment as Carpenter Helper under the Shop Crafts Agreement; since Gisch never gave up his seniority under the Shop Crafts Agreement he never acquired seniority under the Clerks' Agreement. (See also Awards 2706 and 4278 of this Board.)

Rule 1 of the Clerks' Agreement states that "These rules shall govern the hours of service and the working conditions of the following employees, * * *." Claimant contends that the Agreement thus legislates only for employees within the scope of the Agreement, and that in the eyes of the Agreement all persons working for the Carrier not covered by the Agreement are non-employees. This Board believes that the use of the term "non-employees" was intended by the parties to give special protection to employees coming within the scope of the Agreement, in regard to work coming under the Agreement, and that the spirit of such an agreement is to give advantage to persons covered by such. In Award 1040 this Board, without a referee, held that employees under an agreement held preference to a position coming under the agreement over a person "who held no rights under the agreement to the position." In Award 3834 this Board placed a restrictive interpretation upon the word "service" in special protection of employees currently within the scope of the agreement involved there. Rule 4 of the Clerks' Agreement involved in Award 3834 provided that employees voluntarily leaving the service would forfeit all seniority, and if they should re-enter, they should be considered new employees; in respect to the application of this provision this Board said:

"The word 'service' in Rule 4 relates itself solely to the Agreement of which it is a part; that is, service within the scope of the Clerks' Agreement. Since Dendle cannot bring himself within the exceptions provided by Rule 6(c) and (d) of the Clerks' Agreement

he forfeited all rights to seniority thereunder by the provisions of Rule 4 when he entered the service of the Carrier on June 18, 1941, as a Brakeman, a service not within the scope of the Clerks' Agreement."

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of March, 1949.