

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**
THE KANSAS CITY SOUTHERN RAILWAY COMPANY

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

(a) The Carrier violated and continues to violate rules of the current working agreement between the above named parties by failing and refusing to assign Basil Cassidy, Messenger-Collector, Beaumont, to position of Interchange Clerk and the refusal to pay Basil Cassidy the difference in pay between \$10.09 and \$7.84 per day from April 7, 1949, and that

(b) Basil Cassidy be assigned to position of Interchange Clerk and that he be paid the difference between \$10.09 and \$7.84 from and after April 7, 1949.

EMPLOYEES' STATEMENT OF FACTS: On April 1, 1949 H. W. Denbo, Jr., Superintendent of Terminals, in his Bulletin No. 6 advertised a vacancy of Interchange Clerk at Beaumont, Texas, with rate of pay of \$10.09 per day Seven (7) days per week.

Basil Cassidy with Seniority dating of March 13, 1948, in Group 2, placed his bid for the position.

On April 7, 1949, Superintendent Denbo, his Bulletin No. A-6, assigned H. O. Young, an employee with no seniority dating, on Clerks' Seniority Roster.

The Organization protested the failure to properly assign Basil Cassidy on April 8, 1949.

POSITION OF EMPLOYEES: A Working Agreement, effective April 1, 1943 between the above named parties is in effect and the following rules of such agreement are quoted:

"RULE 1. These rules shall govern the hours of service and working conditions of all that class of clerical, office, station and storehouse employees of The Kansas City Southern Railway Company of which the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees is the duly authorized representative, grouped as follows:

"Referring to our conference March 9th concerning—

Claim of Basil Cassidy, Messenger-Collector, Beaumont, for assignment as Interchange Clerk, instead of H. O. Young, and difference in pay between \$10.09 and \$7.84 per day from April 7, 1949.

I believe we are in agreement that prior to April 7, 1949, Young had no seniority in either Group 1 or Group 2 and that Cassidy had seniority in Group 2 but not in Group 1. Both made application for Group 1 position.

Rule 7 (a) provides that 'employees covered by these rules shall be in line for promotion.' I think there can be no question but what Cassidy and Young were both employees covered by the Clerks' rules.

The Carrier's position is that since neither Cassidy nor Young had Group 1 seniority each stood in exactly the same status as the other so far as concerned their rights to a Group 1 position namely: They both were in line for promotion, and both were probably entitled to consideration over a non-employee.

I understand your contention to be that Cassidy's Group 2 seniority gave him seniority rights to a Group 1 position over Young. With this I do not agree, therefore, my denial of the claim is again reaffirmed."

It was also suggested to the General Chairman, in conference February 9, 1950, that if he desired to change the rules so that Group 2 employees could use their seniority as such to bid for Group 1 positions that he should offer a suggestion as to how rule should be revised, but to date he has failed to do this.

Claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: By bulletin dated April 1, 1949, Carrier advertised a position of Interchange Clerk at Beaumont, Texas. Claimant Cassidy, an employee with seniority date of March 13, 1948, in Group 2, placed a bid for the position. On April 7, 1949, Carrier's Superintendent of Terminals announced the appointment of one, H. O. Young, to the position. Mr. Young held an "employee status" under the Agreement by reason of service as an extra clerk.

On argument and to some extent in the record Carrier has injected the question of fitness and ability of Claimant for the position of Interchange Clerk. That question was not involved in the handling of this claim in the lower steps in the grievance procedure on the property and seems only to have been incidentally raised by Carrier officers on the highest steps. Carrier's attitude with respect to this question is somewhat inconsistent, however, for it states in the record that the only question here involved is whether or not Cassidy's Group 2 seniority gives him seniority rights over another employee for a position outside of the group in which he holds seniority. Accordingly, we shall confine our consideration in this docket to a determination of the question of whether or not an individual holding seniority as a Group 2 employee has a preferential right to appointment to a vacancy in a Group 1 position over an employee holding "employee status" by reason of service as an extra clerk, assuming the Group 2 employee has sufficient fitness and ability.

In the Agreement between the parties hereto, there are elaborate provisions governing among other matters the acquisition of seniority, keeping of records thereof, and protection of seniority rights. The whole tenor of these provisions of the Agreement indicates an intention on the part of the parties to secure tenure of employment and advancement to positions covered by its rules to employees gaining seniority. In construing a specific clause of a written agreement, the intent of the parties should be determined from the agreement as a whole. Hence, it is with these factors in mind that we examine the provisions of Rule 3, concerning Seniority Datum, and Rule 7, concerning Promotion, Assignment and Displacement. These rules in pertinent part read as follows:

"SENIORITY DATUM

Rule 3. (a) An individual acquires an employee status at the time his pay starts (subject to the provisions of Rule 57), and acquires seniority in accordance with paragraphs (b) and (c) hereof.

(b) Seniority in Groups 1 and 2 begins at the time an employee is assigned by bulletin to a position in accordance with this agreement in the seniority district and group where assigned."

"PROMOTION, ASSIGNMENT, AND DISPLACEMENT

Rule 7. (a) Employees covered by these rules shall be in line for promotion. Promotions, assignments, and displacements under these rules shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail. The word 'sufficient' is intended to more clearly establish the right of the senior employee to bid on a new position or vacancy where two or more employees have adequate fitness and ability.

(b) Employees promoted from Group 3 to Group 2 positions or from Group 2 or Group 3 to Group 1 positions shall acquire seniority in the higher group in accordance with Rule 3 (b) and shall retain and continue to accumulate seniority in Group 2 or Group 3. If displaced, they shall be required to exhaust their seniority rights in group and seniority district in which employed before being permitted to exercise rights over employees in group and seniority district from which promoted and must return to Group 1 as soon as their seniority will permit their holding a regular assignment, or forfeit seniority in Group 1."

Rule 7 clearly bases promotion upon three factors—(1) Seniority, (2) Fitness and (3) Ability. This provision is general insofar as "seniority" is concerned. It does not confine the recognition of seniority to that held in specific groups. Paragraph (b) of the rule recognizes that employees will be promoted from the lower group to the higher group. Rule 3 in distinguishing between an individual holding "employee status" and restricting acquisition of seniority in Groups (1) and (2) to employees assigned by bulletin to a position, indicates an intention to afford greater dignity to the seniority status than to the "employee status". It is logical therefore, to assume that in making seniority a factor in promotions, assignments and displacements under Rule 7, it is the seniority acquired under Rule 3 which the parties intended. Accordingly, an employee holding seniority in Group 2, if of sufficient fitness and ability, would be entitled to assignment on a bulletined position in preference to one holding an "employee status" or an applicant with no existing employment relationship with the Carrier. A sustaining award is indicated.

It appears from the record that Claimant was appointed to the position of Interchange Clerk on September 22, 1949. The claim for monetary reparation should cease as of that date.

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 Carrier violated the Agreement.

AWARD

Claim sustained as indicated in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of March, 1951.