

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

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

BROOKLYN EASTERN DISTRICT TERMINAL

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

1. The Carrier violated the provisions of the Clerks' Agreement when it failed to assign the senior qualified employe, holding seniority rights within the Scope of the Clerks' Agreement, to a position of Chauffeur, and
2. Claimant P. Cameron holding seniority rights in and under the terms of the Clerks' Agreement, shall be assigned to and awarded the position of Chauffeur, as provided for in the Clerks' Agreement, and
3. Claimant whose seniority entitles him to the position, shall be paid for all monetary losses, starting February 15th, 1954, and each day thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective April 1st, 1938, and revisions effective September 1st, 1949 to cover the 40 Hour Week Agreement, governing hours of service and working conditions of Clerks, Chauffeurs, Watchmen, Freight Handlers, etc. The Rules Agreement will be considered a part of this Statement Of Facts. Various Rules, therefore, may be referred to from time to time, without quoting in full.

This dispute involves the question of whether or not the Carrier complied with the meaning and intent of the Clerks' Agreement, when it:

Failed to assign P. Cameron, a Seal Clerk, having seniority dates of 5-23-49 as a Freight Handler and 1-22-52 as a Group 2 Employee, to an advertised position of Chauffeur.

On February 5, 1954 the following position was advertised:

Rule 3(a) Seniority

"Seniority begins at the time the employee's pay starts in a group, on a position covered by this agreement".

Rule 13—"Temporary Assignments"

"Bulletin positions may be filled temporarily pending an assignment, senior qualified employees desiring same to be given preference, and in the event no applications are received, may be filled without regard to seniority rules".

It is again stated that P. Macri awarded position of Chauffeur, had payroll record as chauffeur as of June 3, 1945. During all the years thereafter, P. Macri was used as Relief Chauffeur (Exhibit O) without any protest from the Organization.

Furthermore, no indication was ever received from any employee that they desired to fill the position (Exhibit M).

The Organization after listing Group 3 and Group 2 employees as claimants for the position (Exhibit H) finally have made claim for P. Cameron who was a Freight Handler covered by the I. L. A. Local No. 976 agreement and a late date as a Group 2 employee.

POSITION OF CARRIER: Brooklyn Eastern District Terminal respectfully submits to your Honorable Board, the following:

1. There is an agreement in effect with the Organization dated April 1, 1938.
2. There is a supplemental agreement in effect dated November 19, 1952 providing for Freight Handlers (Exhibit P).

A. The Carrier Submits again:

That the seniority rule provides that "Seniority begins at the time the employees pay starts, on a position covered by this agreement".

P. Macri's payroll record shows that he worked as Chauffeur on June 3, 1945.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim that the position of Chauffeur, a Group 3 position under the Clerks' Agreement, which was awarded on February 15, 1954 to P. Macri, should have been awarded to P. Cameron.

Macri was employed by the Carrier as a Trackman on June 6, 1938 and, with the exception of 56 days spent as relief chauffeur, continued in that position until awarded the position in question. He first was assigned as relief chauffeur on September 5, 1944 and thereafter performed these duties on 5 additional days in 1944, 7 days in 1945, 6 days in 1946, 10 days in 1950, 16 days in 1951, 1 day in 1952 and 10 days in 1953. The position of Trackman is not covered by the Clerks' Agreement or any other agreement on the property.

Cameron was employed as a freight handler, a Group 3 position, on May 23, 1949 and later acquired seniority as a Seal Clerk, a Group 2 position, as of January 22, 1952. The provisions of the Clerks' Agreement first became applicable to the position of chauffeur on November 19, 1952. They did not become applicable to the position of freight handler until September 10, 1954.

The position of chauffeur had never been bulletined under the Clerks' Agreement prior to February 5, 1954. It was bulletined at that time as the result of the retirement of the incumbent, who had held the position since prior to the current Agreement with the Clerks dated April 1, 1938. When the job was bulletined, both Macri and Cameron, among others, bid for it. It is clear that Cameron's seniority as a freight handler cannot be considered in determining his rights to the position, since freight handlers were not covered by the Agreement at the time the position was advertised. The question is whether Macri is entitled to the job by virtue of his relief service since 1944, as against Cameron's 1952 seniority date as Seal Clerk.

Rule 3(a) of the Agreement provides: "Seniority begins at the time the employee's pay starts in a group, on a position covered by this Agreement". Carrier contends that under this rule Macri has seniority in Group 3, in the position of Chauffeur, dating from his first day's service in that position.

Claimant contends that when all of the seniority provisions of the Agreement are considered, it is spelled out that Macri could only accumulate seniority by being continuously assigned to a position or positions covered by the Clerks' Agreement; and that under Rule 5—"Employees voluntarily leaving the service will forfeit seniority by such action and if they re-enter, be considered new employees."—Macri forfeited any seniority he had accumulated under the Agreement each time he returned to the position of Trackman, which is outside the scope of the Clerks' Agreement.

There is a dispute of fact as to whether Carrier considered Macri as having seniority under the Agreement prior to the time he bid on the Chauffeur position. The Organization states (p. 42) that a seniority roster of Group 3 employees other than freight handlers was prepared when the Union Shop Agreement was signed on November 19, 1952; and that Macri's name did not appear on this roster nor was he required to join the Clerks' Union. Carrier states (p. 46) that no roster was posted for Group 3 employees until January 1, 1955, and that Macri appeared on that roster.

The seniority provisions of the Agreement must be considered together as a whole in order to discover the meaning intended by any one provision. Upon such consideration, it seems clear that the intention was to establish a scheme of advancement within the group of positions covered by the Agreement based upon the accumulation of seniority through continuous service in such positions. Macri's regular position was Trackman. It is clear from the record that both he and the Carrier recognized this, and that it was never his intention or desire to abandon that position or to create a situation through his relief work as chauffeur whereby he would be required to protect other positions covered under the Clerks' Agreement. Rather, it was his intention to return to and protect his position of Trackman each time his relief stint was over.

A relevant statement by this Division as to the nature of seniority is contained in Award No. 5099. There the Board said:

"As heretofore indicated, seniority is something peculiar to the agreement of which it is a part. It controls the assignment of work to a given craft or class and confers right upon employees covered by the agreement only so long as they remain subject to its terms and conditions. True, the Organization can provide for the retention and even the accumulation of seniority by employees formerly under the agreement when transferring to a position without the agreement. However, the intent to do so is never inferred nor implied but must be found in the express language of the agreement".

In this case, it appears that the parties had the opposite intent, as evidenced by Rule 5. Macri, on every occasion when he finished his assignment as relief chauffeur, returned to his regular position of Trackman, outside

the scope of the Clerks' Agreement. Therefore, he retained no seniority standing in bidding for jobs under that Agreement.

Since Macri had no seniority under the Clerks' Agreement and Cameron had seniority as a Seal Clerk in Group 2, under the terms of the Agreement the Chauffeur position in question should have been awarded to Cameron.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 7th day of June, 1956.