

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

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

The Carrier violated the Rules of the Clerks' Agreement when on December 6, 1954, and subsequent thereto it denied Clerk P. W. Nobles, hereinafter referred to as Claimant, the right to displace a junior employe occupying the O. S. & D. (Claim) Clerk's position in the agency at Tallahassee, Florida, although the position had been previously occupied by Claimant for more than a year.

That, as a penalty for the Agreement violation, Claimant be paid eight (8) hours at the pro rata rate of the O. S. & D. (Claim) Clerk's position at Tallahassee for December 6, 1954, and the same for each and every work day subsequent thereto thru December 22, 1954.

EMPLOYES' STATEMENT OF FACTS: The facts are contained in the investigation held in connection with the instant claim and transcript of said investigation is made a part hereof by being attached hereto as Employes' Exhibit A. (The questions and answers of the investigation have been numbered by Employes for reference purposes and to facilitate identification and will be hereafter referred to by these numbers)

Claimant's seniority date is October 29, 1942, and the record shows that he worked as ticket clerk, baggage clerk and performed all phases of agency work in his seniority district prior to March 1952. At this time account of Claimant's position being abolished he went to Tallahassee, Florida and exercised his seniority on the Rate Revision Clerk's position. (QA-15-128-271)

On November 19, 1952, Claimant was displaced on the Rate Revision Clerk's position by a senior employe thru exercise of seniority and in turn Claimant displaced junior employe, Mrs. A. G. Short, occupying position of O. S. & D. (Claim) Clerk. (Employes' Exhibit B and QA-46-49-51)

OPINION OF BOARD: Effective December 6, 1954, Claimant was displaced by a Senior employe and immediately sought to displace a junior employe on the position of O. S. & D. Clerk, which he had previously held for more than a year until he bid on another position in December 1953. On receipt of his bid the agent informed him by letter that it would not be satisfactory with him for Claimant to displace the O. S. & D. Clerk owing to the manner in which Claimant handled the position sometime back.

Claimant then sought and had conference with the Superintendent to discuss the Agent's denial of the position and thereafter requested a hearing under the Grievance Rule "inasmuch as a satisfactory solution apparently is not in sight", but he made no statement of claim or grievance.

A formal investigation was then held and at the close of the investigation Claimant's General Chairman and representative stated into the record:

"We request that Clerk Nobles be permitted to exercise his seniority at once on a position on this operating division to which his seniority entitles him, and that he be paid the same as has been paid the occupant of the O. S. & D. Claim Clerk's position, on which he wished to displace, from December 6, 1954, up to and including date of this investigation."

This request was denied in writing by the Superintendent, but the first part was evidently granted as Claimant promptly sought to displace a junior employe on another position and was permitted to do so.

Assuming that the statement of claim was sufficient and that the claim was properly progressed, which is neither shown nor disputed in the docket, we have the issue of whether carrier was arbitrary or capricious in denying Claimant's request to displace on the O. S. & D. Clerk's position.

That position principally involved inspection of damaged freight shipments and adjusting of losses thereon. Ample showing was made at the investigation of dissatisfaction by patrons with Claimant's handling of such claims and of his inability to maintain friendly relations with them; of their refusal to deal with him; of loss of revenue because of such dissatisfaction and the return of such business after he left the position.

Written statements received from patrons were properly received as evidence and the fact that they bore the same recent date so were apparently solicited, did not make them objectionable. No request for time to make further inquiry was made at the hearing and at its close both Claimant and his representative stated that it had been conducted in a fair and impartial manner.

There was substantial evidence to support the conclusion of management that Claimant lacked the personality qualification to make him fit and able to handle the peculiar duties of the position which was denied him and in such situation it would have been unfair both to carrier and Claimant to have restored him to the position pending investigation.

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 Employe involved in this dispute are respectively Carrier and Employe 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1960.