

Award No. 9386

Docket No. CL-8209

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

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

**CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD**

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

Carrier violated the Clerks' Rules Agreement when it permitted Employee Paul Kleinman, Jr., a switchman, holding seniority as such and working under the jurisdiction of the Switchmen's Agreement to displace Yard Clerk, Robert W. Lindholm.

Carrier shall now be required to compensate Employee Robert W. Lindholm at the regular daily rate of pay of his Yard Clerk position #4 for January 21, 22, 23, 24, 27 and 28, 1954.

EMPLOYEES' STATEMENT OF FACTS: *Employee Paul Kleinman, Jr.* established seniority as a clerk on October 3, 1950, and on January 1st, 1954 was the regular occupant of a rest day relief position.

Employee Robert Lindholm established seniority under the Clerks' Agreement on December 1, 1951 and on January 16, 1954 was the regular assigned occupant of yard clerk Position No. 4; assigned hours 3:59 P. M. to 11:59 P. M., with Monday and Tuesday as assigned rest days.

While working as a clerk, Employee Kleinman made application for position of switchman, filled out the required papers, took the necessary examination and actually performed work as a switchman beginning seniority in that class of service as of January 2, 1954. He continued, however, to remain on his position as a clerk until his notification of displacement by senior clerk H. Vannoy effective January 18, 1954.

Mr. Kleinman then notified Superintendent W. J. Hotchkiss of his intent to displace employee Lindholm on Position No. 4 effective Wednesday, January 20, 1954. Copy of his letter of notice to Mr. Hotchkiss is attached as Employees' Exhibit "A". Copy of the superintendent's acknowledgement and approval for such displacement is attached as Employees' Exhibit "B".

On January 21, 1954, the Division Chairman wrote to the Superintendent regarding the displacement of employee Lindholm by employee Kleinman, and

Agreement—and the Carrier wholeheartedly subscribes thereto. The employees argue that the Carrier's interpretation of the language of Rule 3 (g) is not correct. We submit that it is the intent the parties had when the rule was written and we also submit that a careful analysis of the language, particularly the words "would entitle", would leave no doubt about that fact.

Although the employees submit claim in behalf of junior employee Lindholm, based on the contention that he was the rightful owner of Yard Clerk Position 4 on January 21, 1954 and should not have been displaced therefrom, we should like to point out that employee Lindholm had forfeited his "ownership" of Yard Clerk Position 4 on January 19, 1954 when he left Seniority District 32 and his regular assignment in that seniority district and took over the temporary vacancy on the position of Roundhouse Clerk at Ottumwa, the regular occupant of which was employee H. Vaughan, who was the Division Chairman and we understand is a relative of employee Lindholm. The position of Roundhouse Clerk at Ottumwa is in Seniority District 56. Employee Lindholm forfeited his seniority rights to Yard Clerk Position 4 in Seniority District 32 when he accepted employment in Seniority District 56 and he therefore was not actually displaced from Yard Clerk Position 4 by senior employee Kleinman on January 21, 1954.

It is the Carrier's position that employee Kleinman held seniority rights under the Clerks' Agreement up to January 29, 1954 when he resigned and prior to that date he had fully discharged all of his obligations under the Clerks' Agreement, sufficient to cause him to retain, intact, his clerical seniority rights.

There is no merit in the claim which the employees have presented and we respectfully request that it be denied.

All data contained herein has been presented to the employees.

(Exhibits not reproduced)

OPINION OF BOARD: Prior to January 2, 1954, Claimant and Paul Kleinman, Jr., had established seniority dates in Clerical Seniority District No. 32. Claimant, who was junior in service to Kleinman, occupied Yard Clerk Position 4 at Ottumwa, Iowa. Kleinman was regularly assigned to Relief Clerk Position 17 at the same location.

Kleinman applied for the position of switchman. He filled out the required papers and took the necessary examination. Commencing January 2, 1954, Kleinman accepted work as switchman on his days off from his regular assignment as clerk or after completing his tour of duty as clerk. On January 18, 1954, he was displaced from his position as a clerk by a senior employee. In accordance with his request, Kleinman was permitted on January 21, 1954 to displace Claimant on Yard Clerk Position 4. On January 29, 1954, Kleinman submitted a letter in which he stated "I hereby resign my clerical job and seniority in order to accept employment as a switchman."

Relying on Rules 1, 2, 3(a), 3(g), and 3(i) of the applicable Agreement, Claimant contends that Kleinman was not entitled to displace him on the clerk's position for the reason that Kleinman forfeited his seniority as a clerk by accepting employment on a position covered by the scope of another agreement.

The Carrier argues that no forfeiture of seniority occurred prior to Kleinman's resignation as a clerk on January 29, 1954 because he performed

all his obligations as a clerk, did not accept work as a switchman in preference to or in place of his regular position as a clerk, and that the Agreement did not prohibit Kleinman from working as a switchman after his tour of duty as a clerk was completed or on his days off from his regular position as a clerk.

Rule 3(g) states that:

"Employee accepting employment with the Railroad on positions covered by the scope of other agreements when their seniority would entitle them to a regular position, or vacancy of more than thirty (30) days duration within the scope of this agreement, will forfeit all seniority rights unless otherwise agreed to between the Carrier and the General Chairman."

The record does not suggest any basis on which the impact of this Rule on the facts presented by the claim may be blunted. During the period from January 2, 1954 to January 21, 1954, Kleinman accepted employment as a switchman in order to establish seniority in that craft. Meanwhile, he worked his regular assignment as a clerk without the intention or expectancy of remaining in that class of service, and on January 29, 1954, formally resigned therefrom in accordance with the papers and examination which he had completed for employment as a switchman. No reason is suggested for the failure to satisfy by agreement the permissive exception provided at the end of the Rule. We cannot say that Rule 3(g) says less than it does.

This Division has 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." Award 4338. Accord: Awards 1244, 3834, 5099, 7337.

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

Dated at Chicago, Illinois this 2nd day of May, 1960.