

Award No. 11116
Docket No. CL-10851

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

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

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 Foreman, and
2. Claimant P. Cameron holding seniority rights in and under the terms of the Clerks' Agreement shall be assigned to and awarded position of Foreman as provided for in the Clerks' Agreement, and
3. Claimant P. Cameron whose seniority entitles him to the position and other affected employes, shall be paid for all monetary losses, starting February 10, 1958 and each day thereafter until the violations are corrected.

EMPLOYEES' 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 Chauffeur, having a seniority date of May 23, 1949 as a Group 3 employe and January 22, 1952 as a Group 2 employe, to an advertised position of Foreman in Group 2.

Refused to agree to settle this claim on the results of the Award handed down in the dispute covered by Docket CL-10021, which is an identical claim

OPINION OF BOARD: This controversy involves facts similar to those in Award No. 10167, Docket No. CL-10021. The parties are the same and the rules involved are the same.

The Claimant was not awarded a Foreman's position in Group No. 2, although he had seniority of approximately two months ahead of P. Cabri.

We are of the opinion that the conclusions reached in Award 10167 are correct, there are no sound reasons for disturbing this award, and the Claimant should be awarded the Foremans position.

Claim three is denied, except he shall be entitled to difference in pay on first Foreman's position. We cannot contemplate what the Claimant might do or not do with respect to asserting his seniority on the other position; we cannot make a decision which relies on conjecture or speculation.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

AWARD

Claims 1 and 2 sustained. Claim 3 sustained to the extent as expressed in the opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1963.