

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

(1) Carrier violated rules of the current Agreement with the Brotherhood of Railway Clerks on April 16, 1959, when it refused to allow Mr. Joseph E. Deranleau to exercise his seniority rights to displace Mr. J. J. Makowski, a junior employe, from position of Janitor on the Third Floor of the Rio Grande Building.

(2) Mr. Joseph E. Deranleau shall now be paid an additional day's pay for each and every day he is withheld from the assignment on which he wished to displace, starting with April 16, 1959, until this violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Prior to April 16, 1959, Mr. Joseph E. Deranleau was assigned to position of Utility Janitor. On April 13, 1959, Building Superintendent issued bulletin stating: "Effective April 16, 1959, Utility Janitor position now held by Mr. Deranleau will be abolished."

Mr. Deranleau was off sick at the time this bulletin was posted and did not report for work until the afternoon of April 16, 1959, at which time he was advised by the Building Superintendent that it would be necessary for him to place on a position before he could go to work as his regular position of Utility Janitor had been abolished.

Mr. Deranleau advised the Building Superintendent that he would displace Mr. J. J. Makowski, a junior employe, who was assigned to the position of janitor on the Third Floor of the Rio Grande Building. The Building Superintendent then informed Mr. Deranleau that he could not displace the janitor working on the third floor since none of the janitors had specific assignments and that he, as Building Superintendent, could use the janitors anyway he wanted to use them. (Employes' Exhibits Nos. 8 and 9.)

This Carrier has never specified the duties nor designated floors insofar as Janitors' positions are concerned; to the contrary, janitors' positions are bulletined: "Janitor's work in Rio Grande Building." Janitors have been used to perform any and all janitor work on any floor in the Rio Grande Building as requirements of service dictate.

As previously stated, claimant was assigned position of Janitor, he suffered no loss of earnings and as stated in Award No. 23, Special Board of Adjustment No. 167, in the absence of other rule providing for a penalty, claimant should be reimbursed for loss of earnings.

In this case claimant suffered no loss of earnings.

Claim must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: At the close of April 15, 1959, the position of utility janitor to which Joseph E. Deranleau was regularly assigned was abolished. Mr. Deranleau exercising his seniority rights advised the Building Superintendent that he would displace Mr. J. J. Makowski, a junior employe performing janitor work on the third floor of the Rio Grande Building. When the Building Superintendent informed him that he could not have this specific assignment, he placed a bid for a bulletined position of janitor to which he was appointed.

Mr. Deranleau makes claim that Carrier violated the Agreement when it refused him the right to displace the junior employe on the third floor of the Rio Grande Building. Petitioner takes the position that his seniority rights entitled him to displace any position held by a junior employe. He argues that janitors have specific assignments in the building and that refusal of the work on the third floor constituted a denial of his seniority rights.

Carrier contends that the rules of the Agreement give the senior employe the right to displace a junior janitor but do not give him the right to designate a specific floor or choice of duties. It also points out that janitors' positions have never been bulletined as work on a specific floor.

There is agreement that Mr. Deranleau had the right to exercise his seniority over a junior employe when his position was abolished. The question, however, is whether the junior employe occupied a particular position of Janitor on the Third Floor or was assigned as janitor in the Rio Grande Building. If Mr. Makowski held the position of Janitor on the Third Floor, Mr. Deranleau would be within his seniority rights in requesting that specific position. On the other hand, if Mr. Makowski served as a janitor in the Rio Grande Building, Claimant would not have the right to designate the location of the position.

The record indicates that at various times janitors were used as a group to perform work on all floors of the Rio Grande Building. At other times, the head janitor assigned these employes to particular floors. The bulletins advertising the position of janitor, moreover, did not state that the work to be performed was for a specific floor.

The Agreement does not provide that Carrier must assign janitors to specified locations in a building. It is true that at the time Mr. Deranleau

asked to displace Mr. Makowski, that junior employe performed janitorial duties on the third floor. This fact by itself, however, does not reserve to him the third floor as the only location where he can do his work. In the absence of a limitation by the rules, management has the right to exercise its discretion in employing janitors in the building in accordance with its needs.

We find that junior employe Makowski occupied the position of janitor in the building, not the position of Janitor on the Third Floor. The Claimant's exercise of seniority did not include the right to select the third floor location for his janitorial duties. The claim is therefore denied.

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

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1964.