

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**Third Division**

**Paul Samuell, Referee**

**PARTIES TO DISPUTE:**

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

**NORTHERN PACIFIC RAILWAY COMPANY**

**DISPUTE.**—"Claim of Mr. H. E. Beals for time lost on March 12th and 14th, 1932, because of not being called to fill vacancy caused by illness of another employe at Yardley."

**FINDINGS.**—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds 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.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

This dispute being deadlocked, Paul Samuell was called in as Referee to sit with this Division.

The following Statement of Facts is jointly certified by the parties, and the Third Division so finds:

"Mr. Thompson, first shift manifest clerk, reported sick and unable to work on March 12th and 14th, 1932. Mr. Beals at that time was out of service on account of reduction in force. Mr. Weiselman, junior in service to Mr. Beals, who was also out of service because of force reduction, was called on March 12th and 14th to work in Mr. Thompson's place.

"It has been the practice at Spokane (Yardley is in the Spokane terminals) for employees who are suspended because of force reduction, and who desire to be called for temporary or emergency service in the Spokane terminals, to give their names and addresses to the General Yardmaster and to the Agent who have used such men for such service in the order of seniority when they have been available and are qualified to handle the work."

An agreement dated August 15, 1922, exists between the parties and the disputants have made reference to the following rules therein contained:

"**RULE 5. (a) Promotion basis.**—Employes covered by these rules shall be in line for promotion. Promotion shall be based on seniority, fitness and ability; fitness and ability being sufficient, seniority shall prevail except, however, that this provision shall not apply to the excepted positions.

"**NOTE.**—The word 'sufficient' is intended to more clearly establish the right of the senior clerk or employe to bid in a new position or vacancy where two or more employes have adequate fitness and ability.

"(b) The positions of Chief Clerk to Master Mechanic, Chief Clerk to Assistant Superintendent, Chief Clerk to Trainmaster, Chief Clerk and Cashier in the following freight offices: Duluth, St. Paul, Minneapolis, Tacoma, and Seattle; cashier in freight office at Billings, Butte, and Spokane shall be subject to all the rules of this agreement except that promotion to these positions shall be: Merit and ability being equal the senior applicant will be awarded the positions, the appointing officer to be the judge (subject to appeal)."

"**RULE 7. New positions and vacancies.**—Seniority rights of employes to vacancies or new positions will be governed by these rules."

"**RULE 14.** Positions or vacancies of thirty (30) days or less duration, shall be considered temporary, and may be filled without bulletining."

"RULE 15. Positions or vacancies of indefinite duration need not be bulletined until the expiration of thirty (30) days from the date of employment or vacancy."

"RULE 16. Positions or vacancies known to be of more than thirty (30) days' duration will be bulletined and filled in accordance with those rules."

"RULE 20. *Reducing force.*—When reducing forces seniority rights shall govern. When forces are increased employees shall be returned to service in the order of their seniority rights. Employees desiring to avail themselves of this rule must file their addresses with the proper official at the time of reduction, advise promptly of any change in address and renew address each ninety (90) days. Employees failing to renew their addresses each ninety (90) days or to return to the service within seven (7) days after being notified (by mail or telegram sent to the address last given) or give satisfactory reason for not doing so will be considered out of the service."

"Employees who, on account of reduction in force, have performed no service for the railway company for a period of one year, will be dropped from the seniority roster."

"RULE 30. *Exercising seniority.*—The exercise of seniority in reductions of force or displacing junior employees provided for in this article is subject to the provisions of Rule 5 of this article."

**ADDITIONAL FACTS.**—In addition to joint statement of facts the record shows that Beals had sufficient fitness and ability; that he had been carried on an extra list; that the Chief Yard Clerk neglected to call Beals after his attention had been drawn to the fact that he had neglected or failed to call claimant on a previous similar occasion despite his promise so to do.

**POSITION OF EMPLOYEES.**—That Rules 5, 7, 20, and 30 clearly show employees should be returned to service in the order of their seniority; that Rules 7 and 30 draw no line of demarcation between a temporary or permanent vacancy; that if it be right to make certain requirements of an employee in order that he may be used for extra or relief work so that the business of the carrier may be protected and handled when emergencies arise, there is an equal obligation on the part of the carrier to call employees in order of seniority whether the positions be temporary or otherwise; that otherwise the practice would be unfair because the carrier could call employees out of seniority order to protect the rights of certain preferred individuals and thus when no service is performed by an employee for a period in excess of a year his name would be dropped from the seniority roster under the rule, and that the rules were not intended to permit such practice or circumvent the true spirit and intention of the seniority rule; that the long adopted practice of maintaining an extra list and calling employees in the order of seniority was a recognition of the rule contended for by the claimant.

**POSITION OF CARRIER.**—That there was no "increase" in forces in this disputed case but simply a substitution of position; that Rule 5 is not applicable because no "promotion" is involved; that Rule 7 does not apply because it is not a rule which stands alone but has relation to all the rules of the Agreement that might be applicable; that Rules 14, 15, and 16, when used in connection with Rule 7, produces the conclusion that positions or vacancies of less than thirty days' duration are considered temporary and may be filled without regard to the seniority of employees; that this has always been the practice of this carrier; that Rule 20 covers only reduction and increase of forces, and since this case is only one of substitution of persons for temporary purposes, such Rule does not apply; that the arrangement at Spokane was purely local and was adopted for accommodation purposes only; that Rule 30 has no bearing because it is to be considered only in connection with Rule 5 when employees exercise their seniority in reduction of forces or displacing junior employees.

The able briefs and arguments presented in this case have raised a very interesting question. It is indeed a plausible argument of the carrier that Rules 14, 15, and 16 take no cognizance of the relative seniority status of employees on furlough under a Force Reduction to supply a vacancy of a duration of thirty days or less on a regularly assigned position, much less in the filling of an emergency vacancy of but two days' account illness of the regular incumbent, while it is an equally plausible argument of the employee that Rule 14 says nothing whatsoever as to the carrier being permitted to assign employees to short vacancies or positions without regard to seniority, and that

the Rule merely says that such positions shall be considered temporary "and may be filled *without bulletining*"; that Rule 14 does not, nor does any other Rule in the Agreement, permit vacancies or positions to be filled without regard to seniority rights. A full discussion of the various issues will serve no good purpose in this Award. Suffice to say that seniority rights are one of the foundations of the Agreement as well as all agreements of similar character. Every reasonable interpretation giving recognition to the seniority rule should be given, especially when sufficient fitness and ability are admitted by the carrier and other circumstances or exceptions as provided in the agreement do not intervene.

The peculiar circumstances surrounding this case impels this Division to sustain the claim of the employees. In contracts of this character the word "promotion" is usually construed to mean an advancement or raising to a higher rank, and, generally speaking, such construction is correct, yet the word may in some instances mean fostering, aiding, assisting, or serving. To support the contention of the carrier requires a strict construction. This Division is of the opinion that a broader application of the word "promotion" should be made in this case to the end that the seniority Rule will be observed. The meaning of the word "promotion" in Rules 5 and 7 may be gathered from the context and general purpose of the contract between the parties. The use of this word should not be taken as interdicting the general scheme of seniority which permeates the Rules. Under Rule 5 we do not consider it unreasonable to say and hold that the Rule means that employees shall be in line for positions where assistance becomes necessary by reason of vacancies or new positions. The appointment to a position may not always be a promotion in the strict sense of advancement or the raising of rank. For instance, the compensation of the new position or vacancy may be less or the working conditions less desirable, yet it cannot be gainsaid that the applicant should be denied the position.

Thus we apply the word "promotion" under Rule 5 in its broader sense in this case, and when read in connection with Rule 7 it is reasonable to say that seniority shall be recognized in vacancies, whether permanent or temporary. Moreover, the word "increase" as used in Rule 20 may not always be confined to mean "enlargement, extension, or addition." It may have the meaning of "Return", and in this case we are of the opinion that this latter application is the more reasonable and practical, thus giving the construction to the sentence in that Rule to mean that when forces are returned, employees shall be returned in the order of their seniority rights. It would indeed be a circumvention of the spirit and intention of the seniority rule if the carrier could, by reducing forces, place competent and deserving employees on the extra list and thereafter select employees of its own choosing from such list, thus avoiding the seniority rule and dropping undesirable employees because of the expiration of the year period as provided in the second paragraph of Rule 20.

#### AWARD

Claim sustained with the understanding that this claim shall not be regarded as a precedent in cases to be decided in the future where other circumstances might become more controlling.

NATIONAL RAILROAD ADJUSTMENT BOARD.

By Order of Third Division:

Attest:

H. A. JOHNSON,  
Secretary.

Dated at Chicago, Illinois, this 14th day of October 1935.