

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Paul Samuel, Referee

PARTIES TO DISPUTE:

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

NORTHERN PACIFIC RAILWAY COMPANY

DISPUTE.—"Claim of J. O. Gray for time lost on August 11th and 24th, 1932, because of not being called to fill vacancies in caller-clerk's position at Yardley, occasioned by the regular incumbent laying off."

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

The carrier and the employees involved in this dispute are respectively carrier and employees 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 Samuel was called in as Referee to sit with the Division.

The parties have jointly certified the following facts, and the Third Division so finds:

"Caller-clerk Pitcher laid off on August 11th and 24th, 1932. Mr. Gray at that time was out of service account reduction in force. Mr. Hemenlotter, junior in service to Mr. Gray, who was also out of service on account of force reduction, was called on August 11th and 24th to work in Mr. Pitcher'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."

The first controverted question in this case is the seniority rule, which is identical with the question raised in CL-119, Award No. 105, and were this the only issue the claim of J. O. Gray would be allowed. However, an additional question has been raised in this case, i. e., did claimant Gray have sufficient fitness and ability? The issue is quite sharp. Claimant unfortunately suffers a physical disability—the loss of an arm. It appears from the record that the position in question required work much heavier than Mr. Gray had previously performed and that such employee was obliged to climb over and between moving cars. The carrier in this instance had the responsibility of selecting an employee with sufficient fitness and ability. We stated in a previous case, "this Division is reluctant to interfere with the decision so made by the carrier so long as it acts in good faith, is without bias or prejudice, and indicates no disposition to purposely or carelessly evade or disrespect the rules as well as the spirit and intention thereof." In the instant case the carrier's superintendent advised the Acting Division Chairman of the Brotherhood to the effect that it was carrier's judgment that Mr. Gray's disability was a serious handicap for the position.

This Division is reluctant to interfere with that decision considering the circumstances and the responsibility placed upon the carrier to appoint employees with sufficient ability and fitness.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 15th day of October 1935.