

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
THE WHEELING AND LAKE ERIE RAILWAY COMPANY

DISPUTE.—

"(a) Claim of Carpenter E. Flower to promotion to position as Carpenter Foreman when vacancy in such position was advertised on January 19, 1935.

(b) Reimbursement for wage loss suffered when not assigned to the foregoing position."

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.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division.

An agreement is found to exist between the parties and the following rules are cited by the employees to support their contentions:

"**RULE 2. Seniority Rights.**—(b) Rights accruing to employees under their seniority entitles them to consideration for positions in accordance with their relative length of service with the Railway, as hereinafter provided."

"**RULE 2. Rights of Others Than Section Men.**—(c) Seniority rights of employees of higher rank than section men to new positions or vacancies of the Track Department, will be restricted to the territory under the jurisdiction of one Roadmaster, in the Bridge and Building Department to or over the entire System. When forces are reduced, employees will have the right to displace employees junior in the service in their own rank, or next lower rank. When force is again increased employees may return to their former positions."

"Foremen shall, before displacing other employees, displace only foremen with less seniority rights on their respective districts."

"**RULE 3. Promotion.**—Section (a). Promotion is an advancement from a lower to a higher rank."

"**RULE 3. Basis of Promotion.**—(b) Promotion shall be based on ability, merit, and seniority. Ability and merit being sufficient, seniority shall prevail."

"**RULE 3. Failing to Qualify.**—(c) Employees accepting promotion and failing to qualify within thirty (30) days, may return to their former position without loss of seniority."

"**RULE 3. How Made.**—(h) Promotions to new positions or to fill vacancies will be made after bulletin notice has been posted for a period of ten (10) days at the headquarters of the gangs in the sub-department of employees entitled to consideration in filling the positions, during which time employees may file their applications with the official whose name appears on the bulletin. The appointment will be made before the ex-

piration of thirty (30) days from the date the bulletin is posted, and the name of the employee selected will then be announced to the foremen, all employees interested, and Chairman of the Local Grievance Committee. New positions and vacancies may be filled temporarily pending permanent appointment."

The Carrier cites the following rule:

"**RULE 3. Basis of Promotion.**—Promotion shall be based on ability, merit, and seniority. Ability and merit being sufficient, seniority shall prevail."

On January 19, 1935, the Carrier called for bids for Carpenter Foreman in Gang No. 4, located at Cleveland, Ohio, at a rate of \$175.00 per month. The position was awarded to Mr. Louis Krueger, who was hired as a carpenter and who carries a seniority date of January 24, 1934. Mr. E. Flower, with a seniority date of September 18, 1930, bid for this position.

Mr. Flower first entered the service of the Wheeling and Lake Erie Railway in January 1922, working until May 1923, was rehired in September 1924, working until April 1930. He returned to the service of the Railroad in September 1930, and is still employed.

Mr. Flower served as Relief Foreman during the following periods:

From December 16th, 1922, until March 1923.

From November 1st, 1926, until the middle of December 1926.

From the last week in December 1926, until the middle of January 1927.

From July 10, 1928, until November 5th, 1928.

From November 16th, 1928, until December 20th, 1928.

Upon the whole record the complaints made for the purpose of evidence in this case, the strongest of which is from Mr. Krueger, an immediately interested party, are insufficient to outweigh the presumptions in favor of Mr. Flower's capacity which arise from his previous appointments described above.

AWARD

(a) Mr. Flower should have been given the position of foreman, and the seniority list shall be revised showing his seniority as a foreman.

(b) Mr. Flower shall be reimbursed for the difference in what he would have received had he been assigned as foreman, and what he earned as carpenter, for the period that Mr. Krueger was acting foreman.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary*.

Dated at Chicago, Illinois, this 13th day of March 1936.