

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**Third Division**

**PARTIES TO DISPUTE:**

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

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

**DISPUTE.—**

"Claim of E. I. Fitches for wage losses represented by difference in pay of Train Crew Caller \$4.24 per day and pay of Utility Clerk \$5.15 per day on October 7th and 10th, 1935, and by difference in pay of Car Checker \$4.56 per day and pay of Utility Clerk \$5.15 on October 11, 1935, account violation of Rules 3 and 6 of current agreement."

**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.

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

"On October 7th, 10th, and 11th, 1935, account extra work at Roper Yard, Utah, an additional Utility Clerk was needed and the position was filled by a clerk holding Group 1 seniority, under Article 1, Scope of the Agreement, but out of service in force reduction.

"Train Crew Caller Fitches, regularly assigned in a Group 2 position but holding seniority in Group 1, makes claim because an employe his junior in Group 1 seniority was used to perform this extra work.

"This claim is for 91 cents per day, October 7th and 10th, and for 59 cents on October 11th."

There is in evidence an agreement between the parties bearing effective date of February 1, 1926, and Rules 3 and 6 thereof, quoted below, have been cited in support of claim:

"**RULE 3.** Seniority begins at the time the employees' pay starts in the seniority district and in the seniority class to which assigned, and will apply only when new positions are created, vacancies occur, positions abolished or reductions of forces.

"When two or more employees enter upon their duties at the same hour on the same day, employing officer shall at that time designate the respective rank of such employees."

"**RULE 6.** Seniority rights of employees to vacancies or new positions will be governed by these rules. Seniority is restricted to the three classes designated in Rule 1 of this Agreement, as follows:

"Group 1—Shall constitute one seniority class.

"Groups 2 and 3, combined—Shall constitute one seniority class. Any employee in Groups 2 or 3, with clerical ability and six months' service, shall have the opportunity, without right of appeal, to bid on vacancies for positions falling in Group 1, in accordance with his seniority date in Group 2 or 3, but taking seniority date as an employee in Group 1 from the date of acceptance of position in Group 1.

"An employee in Groups 2 or 3 used temporarily for relief work in positions falling in Group 1 for a total of 60 days (not necessarily consecutive) will be given a date on roster of Group 1 as of date of comple-

tion of 60 days' service, retaining his seniority date in Groups 2 or 3. Seniority date in Group 1 may be only retained on condition that the employe bids for and accepts the first vacancy in Group 1 for which he may be qualified, and he will continue to accumulate seniority on the roster from which promoted. When forces are reduced the employe will exercise seniority, first on the roster of employees in Group 1 and if forced off of the roster of Group 1, he may within ten days resume date and exercise seniority on roster of employees in Groups 2 or 3. Seniority in Group 1 may only be retained on the condition that when forces are again increased that he returns to a position in Group 1, for which he may be qualified."

Petitioner contends that Mr. Fitches, with a Class 1 seniority date of April 28, 1924, although being regularly assigned to a Group 2 position, was the senior cut-off man in Group 1 and was entitled to be called in his seniority order, under the provisions of Rules 3 and 6; that on October 7 Blaine Pelfreyman, seniority date August 16, 1926, was used on position of Utility Clerk; that October 10, Clarence Coombs, seniority date September 24, 1927, was used on position of Utility Clerk; also that October 11, while Mr. Fitches was occupying position of Car Checker, rate \$4.56 per day, Mr. Coombs, his junior, was used on position of Utility Clerk, rate \$5.15 per day, all of which constitutes a violation of the seniority rules of the agreement.

Petitioner further contends that under the provisions of Rule 6, it was mandatory that Fitches, who was occupying position of Crew Caller in Group 2, return to a Group 1 position at first opportunity in order to retain his Group 1 seniority, and that although Fitches had been compelled, in the force reduction, in order to work, to displace onto a Group 2 position, under the rules of the agreement, he was eligible for service and should have been used by the carrier in Group 1 even though the positions in question were of a temporary nature; that this is evidenced by the fact that the carrier called and used Fitches on a Group 1 position on October 9, 11, 12, 13, and 14.

Carrier contends that there is nothing in Rule 6, or any other rule of the agreement, which makes it mandatory for a clerical employee holding seniority in both Groups 1 and 2, and who, while out of service as a Group 1 employee account of force reduction, bumped or bid in a regularly assigned position in Group 2, to be used on extra Group 1 positions; further that an employee holding a regular assignment in Group 2 is not eligible for extra work in Group 1, except in an emergency when no other Group 1 employees are available, and that as long as an employee is assigned to a regular Group 2 position, he has no right to reenter Group 1, only through bidding in a new position, or a permanent vacancy in the later group.

The Third Division finds that under the provisions of the rules herein cited and practices thereunder, Mr. Fitches should have been used on the date in question.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: H. A. JOHNSON  
Secretary

Dated at Chicago, Illinois, this 17th day of November, 1936.