NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

DISPUTE.—

"Claim of Harry Wells, storehouse employee, Knoxville, Tennessee, for a change in his seniority date in Class 'B' from August 1, 1920, to February 16, 1919."

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

The carrier and 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.

There is in evidence an agreement between the parties bearing effective date of May 1, 1934. The following statement of facts is jointly certified by the parties, and the Third Division so finds:

"Harry Wells entered the service at Coster Storehouse on February 15, 1919; he was carried on the pay roll as a laborer from that date until March 1, 1920, when he was promoted to position of clerk; on August 1, 1920, he was transferred back to the storehouse and carried on the pay roll as storehouse man. However, employees covered by storehouse employees' current agreement, which became effective May 1, 1934, do not, under Rule 10 of that agreement, forfeit accumulated seniority rights when promoted to clerical positions. The principle of Rule 10 was followed in the preparation of seniority lists of the respective classes of storehouse employees when their agreement became effective.

"The storehouse employees' current agreement of May 1, 1934, contains the following rules:

"'RULE 1—SCOPE

"'These rules shall govern the hours of service and working conditions of the following storehouse employees:

"'(a) Foremen;

"'(b) Truck and Tractor Drivers, Torchmen, Groundmen, Storehousemen (including Dope House Men, Oil House Men, Supply Car Men, and Cab Supply Men);

"'(c) Laborers.

"'NOTE.—Storehouse Men and Laborers will work as between themselves in accordance with past practice.

"'Nothing in this agreement shall prevent the working of storehouse labor in shops or vice versa; this shall not, however, be done for the purpose of abolishing positions.

"'This agreement does not apply to employees of any class employed in Roadway Storehouses.'

"'RULE 6—SENIORITY

"'(1) Seniority, as restricted in Rule 16, will be effective and will date from the last time entering the service on the respective seniority district in the respective classes of service embraced by this agreement, namely—

"'(a) Foremen;

"'(b) Truck and Tractor Drivers, Torchmen, Groundmen, Storehousemen (including Dope House Men, Oil House Men, Supply Car Men, and Cab Supply Men);

"'(c) Laborers.

"'While common seniority as between the respective classes of service is not effective, employees promoted from one class of service to another shall retain and continue to accumulate seniority in the class or classes of service from which promoted; similarly, if demoted, seniority will continue to accumulate in the class from which demoted.

"'The respective seniority districts shall consist of the territory over which the respective Division Storekeepers have jurisdiction as of May 1, 1934.'

"'RULE 7—ROSTERS (FIRST PARAGRAPH)

"'Separate seniority lists of respective classes, as set forth in rules 1 and 6, will be prepared annually by proper officers of their respective seniority districts and will be posted in agreed upon places accessible to all employees affected, and a copy will be furnished upon request to the duly accredited representative of employees affected.'

"'RULE 10—EXCEPTED POSITIONS (FIRST PARAGRAPH)

"'Employees now filling or promoted to excepted, official or clerical positions will retain all their rights and will continue to accumulate seniority on the district from which promoted in the classes of service in which their seniority was effective at time of promotion.'

"'RULE 12—VACANCIES (SECOND PARAGRAPH)

"'New positions and vacancies except as above will, within two days, be bulletined to all employees affected of the class in which the vacancy exists. Employees desiring such position must, within five (5) calendar days after bulletin is posted, make written application to the officer issuing the bulletin. The bulletin shall expire at twelve o'clock midnight on the fifth day. From these applications the senior qualified employee possessing sufficient merit and capacity will be assigned to the position.'

"Rule 16, referred to in Rule 6, is not involved in this dispute."

The pertinent rules of the agreement of May 1, 1934, are hereinbefore quoted, except the last paragraph of Rule 7, which reads:

"RULE 7—ROSTERS (LAST PARAGRAPH)

"A statute of limitation of one year is fixed to take up or appeal a case of seniority. If one year elapses without protest, the date so posted becomes a fixture and cannot be protested. Effort will be made by Company and Committee to see that names of all employees required by schedule rules to be carried upon seniority lists are so posted. Failure to so post will not result in forfeiture of seniority unless and until one year has elapsed after written notice to carrier and employee affected that name should be posted."

It was agreed by the parties to this dispute at the oral hearing on September 21, 1936, that in filing this claim Harry Wells complied with the provisions of the last paragraph of Rule 7.

The carrier states, in substance, that prior to May 1, 1934, the storehouse foremen and storehouse men were not covered by any agreement governing rates of pay and working conditions; storehouse laborers were included within the scope of an agreement between the carrier and the Maintenance of Way Employes and Railway Shop Laborers, which organization relinquished jurisdiction as of May 1, 1934. The rates of pay of storehouse men were, in practically all cases, higher than those of storehouse laborers, but there was no classification of work for the respective payroll designations of the positions maintained. Generally speaking, the employes were stepped up from the lower to the higher rates of pay and payroll classifications in the order of their employment, the exceptions being cases of men who either failed or were unable to qualify themselves to perform some of the respective kinds of storehouse work. In other words, promotion was accorded the senior qualified employes possessing sufficient merit and capacity,

for filling of new positions and vacancies in the respective classes. In some cases, the duties of the employes thus promoted were changed, and in other cases they continued to perform the same duties theretofore performed.

That under this plan the employes, regardless of the duties performed, were in most cases carried on the payrolls as laborers until such time as their length of service was sufficient to step them up to the rate of pay and payroll designation of storehouse man, subject to qualifications, merit, and capacity. In the preparation of seniority rosters under the agreement with the Brotherhood of Railway Clerks, as required in Rule 7 thereof, the carrier, in determining the seniority dates of the employes in the respective classes, was governed by the payrolls and personal record cards.

The petitioner states and contends that Harry Wells entered the service as laborer, February 15, 1919; the following day he was transferred to the storehouse and assigned the duties of checking stock of material on hand, putting up material in bins by class order and serial number, issuing material on shop requisitions, and showing the necessary information on the requisitions for charging out the material.

It is the opinion of the Division that employes who were required to perform work of a kind which, the parties have agreed or may agree, determines the classification of employees embraced by Rule 6 (b), and who were required regularly to devote not less than four hours per day to such class of work, are entitled to seniority rights in that class from the date they first entered upon such duties. The Division, however, finds the evidence submitted insufficient for the determination of the questions involved, and, therefore, feels that the dispute should be remanded to the parties with instructions that, if necessary, a joint check be made for the purpose of determining all relevant facts.

The Division, accordingly, remands this dispute in the hope and expectation that the parties shall be able to settle it between themselves; it does so without passing upon the carrier's motion to dismiss and without prejudice thereto and reserving to the parties the right, in the event this case is resubmitted, to renew or revive any motions or answers heretofore filed. In the event of failure of the parties to dispose of this dispute, it may be resubmitted by them, or either of them, with all such evidence as may have been developed by their joint effort to dispose of it, and such other facts and evidence as may be requisite to a final award by this Division.

AWARD

This claim is remanded to the parties for disposition in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 5th day of January, 1937.