

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Arthur M. Millard, Referee

PARTIES TO DISPUTE:

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

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of D. O. Mikels, Yard Clerk, Muskogee Yards, Midland Valley Railroad Company, for position of Yard Clerk, Muskogee Yard, Assigned hours 11:00 A. M. to 8:00 P. M., Rate \$4.71 per day from October 2, 1935, and for all monetary loss sustained as result of his having been displaced from his job."

STATEMENT OF FACTS: Prior to April 14, 1932, controversy existed as to the relative clerical seniority rights of clerks D. O. Mikels and Geo. E. Montgomery. As a result thereof, agreement was entered into April 14, 1932, by which the clerical seniority rights of Mr. Montgomery were established as dating from Sept. 1, 1926. The clerical seniority date of Mr. Mikels was recognized as being Aug. 30, 1928. A controversy again arose on this same question, and effective May 31, 1934, through conference between the parties hereto, the following agreement was reached:

"Effective with the next roster of July 1, 1934, Mr. Montgomery's seniority will be shown as of July 22, 1929, the date which he first occupied a Clerical position, Mr. Mikels' seniority is to be shown as at present, namely, Aug. 30, 1928.

"Mr. Mikels waives any seniority over Mr. Montgomery which he now claims or which he may acquire under this agreement by change in his seniority date in so far as it affects the position now occupied by Mr. Montgomery, or in any position he may occupy while there are four yard clerk positions. It is understood that Mr. Mikels can only exercise seniority over Mr. Montgomery as to any of the four yard positions in the event, through a reduction in force, Mr. Montgomery is displaced by senior employees for more than sixty (60) days.

"It is understood, for the purpose of this agreement that a change in rates, per Rule 10, or change in starting time, per Rule 13, will not give Mr. Mikels any right to displace Mr. Montgomery. Except as herein provided, Mr. Mikels may exercise seniority in accordance with seniority dates shown on roster of July 1, 1934.

Yours very truly,

/s/ J. W. WOMBLE,
General Manager.

cc C. A. Malone,
Geo. Montgomery,
D. O. Mikels."

'It is understood for the purpose of this agreement that a change in rates, per Rule 10, or change in starting time, per Rule 13, will not give Mr. Mikels any right to displace Mr. Montgomery.'

"It is obvious that had Montgomery any doubt about his being able to return to Position 4, he would not have bid for Position 5. The preference for the latter position consisted merely of the change in assigned hours. In fact Position 5, a six-day job, carried less compensation than Position 4, which was a seven-day job.

"Mikels has lost nothing. From Oct. 1, 1935 to Feb. 1, 1937, the pay roll shows Mikels earned \$2,097.72 and Montgomery earned \$2,034.66. Mikels has suffered no monetary loss. He has occupied a regular position during the entire period for which his claim is filed, except for six days in October 1935, and seven days in March 1936."

OPINION OF BOARD: In support of their contentions in this claim the employees have cited Rules 3, 4 and 5 of the existing agreement between the parties, effective June 14, 1921, covering the basis and application of seniority and seniority rights, together with Rules 10 and 13 covering conditions when changes have been made in rates and starting time. However, insofar and only as these rules apply to the seniority and employment standing of the two individuals specifically named as concerned in this claim viz: —D. O. Mikels and Geo. E. Montgomery, these rules as specified and contained in the agreement between the parties effective June 14, 1921, were modified by a supplementary agreement, effective May 31, 1934, entered into between the individuals named and the authorized representatives of the employees and the carrier.

In the supplementary agreement made between Mr. Mikels and Mr. Montgomery on May 29, 1934, and effective on May 31, 1934, and ratified by the representatives of the employees and the carrier, the individual parties agreed that the seniority of Mr. Mikels would remain at August 30, 1928, while that of Mr. Montgomery would be fixed as of July 22, 1929, the date he first occupied a clerical position.

As an additional part of the agreement entered into however, Mr. Mikels waived any seniority over Mr. Montgomery which he then claimed or which he might acquire under the agreement insofar as it affected the position then occupied by Mr. Montgomery or in any position he (Montgomery) might occupy while there were four yard clerk positions.

It was further understood in the agreement that Mr. Mikels could only exercise seniority over Mr. Montgomery as to any of the four yard positions in the event, through a reduction in force, Mr. Montgomery were displaced by senior employees for more than 60 days.

At the time this agreement was made Montgomery occupied the fourth of the four existing yard clerk positions. Mikels was an extra man and not regularly assigned.

Later, or in September 1935, the fifth regular position was created in Muskogee Yards, bulletined by the carrier and bid in by and awarded to Mr. Montgomery on Sept. 14, 1935. The position vacated by Mr. Montgomery, or the fourth position of the previously existing four, was bid in by and awarded to Mr. Mikels on the same day as the fifth position was awarded to Mr. Montgomery.

Position number five was however abolished on Oct. 2, 1935, and Mr. Montgomery was permitted to go back to his former position, or position number four, displacing Mr. Mikels. Shortly thereafter position number five was reestablished and on Oct. 8, 1935 was bid in by Mr. Mikels who was assigned thereto.

In its submission the carrier states that the whole point at issue in this case is whether or not the carrier violated the terms of the agreement of

May 31, 1934 by permitting Montgomery to resume his old position on Oct. 2, 1935. The employees contend that it was, and that in permitting Montgomery to resume his old position or position number 4, the carrier violated the terms of the special agreement of May 31, 1934 and the agreement between the parties of June 14, 1921.

In the opinion of the Board the supplementary agreement of May 31, 1934 superseded Rule 4 of the agreement of June 14, 1921 insofar as it affected the seniority rights of the individuals named, and gave Mr. Montgomery seniority rights in the position he then occupied, or in any other yard clerk position he might occupy while there were four yard clerk positions existant.

In the agreement of May 31, nothing is contained which would prohibit Montgomery in seeking another position in which the hours, conditions or remuneration might have been an improvement over his old position, nor was there anything in that agreement which would have prohibited Mikels from being a successful contender over Montgomery for that position or position number five, had he cared to bid it in. However, when that position, or position number five, was abolished shortly after it was created there was nothing in Rule 4, or other rules of the agreement of June 14, 1921, or in the supplementary agreement of May 31, 1934, to prevent Montgomery from exercising the seniority rights given him in any of the four yard positions indicated in the agreement of May 31, 1934, in the same manner as would be the situation in exercising a seniority right under the application of Rule 4 of the agreement of June 14, 1921.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the action of the carrier was justified in denying Mr. Mikels the right to displace Mr. Montgomery under the terms of the special agreement entered into on May 31, 1934 by the individuals named, and ratified by the proper officers of the employees and the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 14th day of October, 1937.