

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Arthur M. Millard, Referee

PARTIES TO DISPUTE

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

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY

(Frank O. Lowden, James E. Gorman, Joseph B. Fleming, Trustees)

STATEMENT OF CLAIM: "Claim of Mrs. Mary E. Roberts to be returned to position of Master Carpenter's Clerk, rate \$137.00 per month, Little Rock, Ark., and compensated for monetary loss sustained since February 10, 1937, date Mr. J. K. Bleakmore was permitted to displace her from such position."

STATEMENT OF FACTS: The following statement of facts was jointly certified by the parties:

"Mr. J. K. Bleakmore was appointed to 'excepted' position of Secretary to Superintendent, Oklahoma Division, at El Reno, Okla., in July, 1936. He remained on this position until February 8, 1937, when he was permitted to return to the Arkansas Division seniority district, where he holds clerical seniority date of September 4, 1925, and on February 10, 1937, permitted to displace Mrs. Mary E. Roberts, regularly assigned employee, seniority date July 8, 1936, from position of Master Carpenter's Clerk, rate \$137.00 per month.

"The position of Secretary to the Superintendent at El Reno vacated by Mr. Bleakmore was not discontinued and is now held by another employee."

There is in evidence an agreement between the parties bearing effective date of January 1, 1931, from which the following rules are quoted:

RULE 1. SCOPE.

- "(b) These rules shall not apply . . . :
"(h) Or to position in division offices as follows:
Superintendent.
Chief Clerk.
Secretary to Superintendent.
". . . " * * * *

RULE 23. TIME IN WHICH TO QUALIFY

"Employees entitled to bulletined positions will be allowed thirty (30) days in which to qualify and, failing, shall retain all their seniority rights, may bid on any bulletined position, but may not displace any regularly assigned employee.

tion of Assistant Maintenance Clerk, which was the last scheduled clerical position he held, or exercise seniority within five days on any position bulletined during the time he was on an excepted or official position. Mr. Bleakmore complied with all of the provisions of Rule 37 and none of the provisions of Rule 23 are applicable to such a situation.

"Mr. Bleakmore was not disqualified under the ordinary use of that term, as with approximately 11 years' service as a secretary he was competent to perform the ordinary services required on such a position. However, the position of secretary to an officer is of a close personal nature and many factors other than competency to perform the required clerical or stenographic work are present in the relation between the secretary and an officer, and these other factors, while not reflecting on the ability of the secretary, may preclude the possibility of a harmonious relationship existing. Mr. Bleakmore was not disqualified but was relieved because of such a condition, gave up the excepted position and returned to clerical position where the only requirement would be that he be competent to perform the clerical or stenographic duties of that position. Being relieved, his rights are determined by Rule 37."

"On the Rock Island it has been the practice when an employe on an excepted or official position leaves such a position for any reason, to permit him to return to the clerical seniority district on which he holds seniority and displace a junior employe under the application of Rule 37. As evidence of this practice we refer to three similar cases."

OPINION OF BOARD: In the dispute at issue in this claim the employes contend that Mr. Bleakmore was disqualified as Secretary to the Superintendent of the Oklahoma Division, an excepted position on the line of the Carrier at El Reno, Okla., and being disqualified was not entitled to exercise seniority under any of the conditions of Rule 37 of the agreement between the parties, effective January 1, 1931, but was automatically placed in the status of a disqualified employe under Rule 23 of the agreement.

The Carrier contends that Rule 23 of the agreement, as cited by the employes, has no application to this dispute, and that the provisions of Rule 37 are clear as written and that even were Mr. Bleakmore disqualified, which the Carrier denies, Rule 37 very definitely gave him the right to exercise his seniority in the manner outlined in this claim.

In the application of Rule 29 of the agreement between the parties, governing the retention and accumulation of seniority by employes filling or promoted to excepted or official positions, the parties are in agreement as to the seniority of Mr. Bleakmore over that of Mrs. Mary E. Roberts, and that while holding an excepted position on a separate division or in a different district Mr. Bleakmore was properly entitled to accumulate seniority in the district from which he was promoted.

When Mr. Bleakmore was released from his excepted position and returned to his original district, he was entitled to the retention of his seniority rights according to Rule 29 of the agreement.

Rule 37 covers the status of an employe returning after leave of absence, when relieved from a temporary assignment, excepted or official position, and provides that such employe may return provided a senior unassigned employe has not exercised seniority rights thereon, or may upon return, or within five days thereafter, exercise seniority rights on any position bulletined during such absence.

When Mr. Bleakmore returned from the excepted position he occupied, he was entitled, under Rule 37, to return to former position he had held when he was assigned to such excepted position, provided he had not in the meantime been displaced by a senior unassigned employe, or to exercise seniority rights on any position bulletined during his absence.

In view of these conditions and under the proper application and interpretation of Rule 37 of the agreement between the parties the Board finds no basis for disturbing the action of the carrier.

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

From the facts in evidence the Board finds no basis for disturbing the action of the Carrier.

AWARD

Claim declined.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 15th day of December, 1937.