

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

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

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY CO.

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

STATEMENT OF CLAIM: "Claim of R. P. Wheeler to be assigned to position of Rate Clerk, rate \$177.00 per month, office of General Agent, Denver, Colo., and reimbursement for monetary loss sustained account not being assigned to this position effective May 22nd, 1937."

EMPLOYES' STATEMENT OF FACTS: "Position of Rate Clerk in the office of General Agent, Denver, Colo., was advertised as vacant on bulletin No. 5 May 15th, 1937, rate \$177.00 per month, bulletin to close and assignment to be made effective May 22nd, 1937. In response to this bulletin the following applications were received:

Name	Title and Location	Seniority Date
R. P. Wheeler	Rate Clerk, Moline, Ill.	Dec. 16, 1918
A. C. Norman	" " Topeka, Kans.	Mar. 9, 1919
L. W. Cunningham	Asst. Rate Clerk, Minneapolis, Minn.	Apr. 20, 1920
J. R. Hansen	Rate Clerk, Div'n Freight Agent, Omaha, Nebr.	May 7, 1920
H. E. Sherrard	Rate Clerk, Cedar Rapids, Ia.	Sept. 15, 1922
K. H. Hoppe	Rate Clerk, Burlington, Ia.	Apr. 30, 1923
Geo. L. Hansen	Rate Clerk, Auditor Freight Traffic, Chicago, Ill.	Feb. 1, 1924
L. A. Winn	Rate Clerk, Minneapolis, Minn.	June 7, 1924
J. B. Jackson	6th Rate Clerk, Asst. Freight Traf. Mgr., Little Rock, Ark.	Dec. 7, 1925

Mr. J. B. Jackson of the Freight Traffic Manager's Office, Little Rock, Ark., seniority date Dec. 7th, 1925, was assigned to the vacancy."

CARRIER'S STATEMENT OF FACTS: "Position of Rate Clerk in the office of General Agent, Denver, Colo., (Seniority District No. 2, Rule 5) was advertised as vacant on bulletin No. 5 May 15th, 1937, rate \$177.00 per month, bulletin to close and assignment to be made effective May 22nd, 1937. In response to this bulletin the following applications were received:

Name	Title and Location	Seniority Date
R. P. Wheeler	Rate Clerk, Moline, Ill.	Dec. 16, 1918
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application in the instant case. Under the Clerks' schedule in effect on the Rock Island, provision is made for bidding for a position on the same seniority district and applying for a position on another seniority district. The bidding for a position on the same seniority district is made under Rules 7, 8, 9, 10 and 11. Employees applying for positions on other seniority districts do so in accordance with the provisions of Rule 24.

"What are the penalties which a man must face if, on the one hand, he bids for a position under Rules 7, 8, 9, 10 and 11; or, on the other hand, if he makes application for a position under Rule 24, and is assigned to the position for which he makes bid, or for which he makes application, leaves his former position, goes to work on a new position and fails to make good? Rule 23 tells what will happen to the man who bids under Rules 7, 8, 9, 10 and 11 and fails to qualify—the penalty is that he loses the right to return to his old position and in fact loses the right to return to the employ of the company at all until by reason of his seniority he is able to bid in a newly bulletined position. On the other hand, Rule 30 supplies the answer to the question as to what happens to an employee who makes application and is given a position in accordance with the provisions of Rule 24. That employee continues to accumulate seniority in his old district, and the rule provides that he may return to his old seniority district under Rule 37 within a period of five years, and Rule 37, by reason of the reference to it in Rule 30, provides that he may return to his former position providing a senior employee has not exercised seniority rights thereon, or may, on return and within five days thereafter, exercise seniority rights on any position bulletined during his absence. By reason of the reference to it in Rule 30, the language of the first few lines of Rule 37 really means that:

'an employee returning after leave of absence when relieved from temporary assignment, excepted or official position, or returning to his former seniority district, may return . . .'

The underlined words are those which in effect are added to Rule 37 by the reference to it in Rule 30. We refer to all of these rules, 7, 23, 24, 30 and 37, preparatory to making this statement: The provision in Rule 23 to the effect that employees entitled to bulletined positions will be allowed thirty days in which to qualify, did not confer such a right on employees making application for positions in another seniority district under Rule 24, but was intended merely to define the rights of an employee bidding for a position under Rules 7, 8, 9, 10 and 11.

"In other words, one principal purpose of Rule 23 is to define the status of an employee who fails to qualify. The provision, requiring trial, is preliminary to the statement of the consequences of failure to qualify, and since the provision which sets forth the penalty of failure to qualify is applicable only to those who bid for positions under Rules 7, 8, 9, 10 and 11, the provisions that bidders shall be given thirty days to qualify can only apply to those who bid under Rules 7, 8, 9, 10 and 11. That this conclusion is true is shown by the fact that those for whom trial is required must be those who, 'failing,' may not displace any regularly assigned employee. An employee securing a position under Rule 24 and failing to qualify can return to his former seniority district and displace a regularly assigned employee. Therefore, Mr. Wheeler, applying for a position on other than his own seniority district, had no right to a trial under Rule 23.

"There has been no violation of the clerical schedule or recognized interpretations of the rules therein in assigning the senior qualified employee in the Freight Traffic Department to the position at Denver, which assignment was made on the basis of ability, merit and fitness.

"It is affirmed that all data submitted herewith is known to the employees' representative and is hereby made a part of the question in dispute."

OPINION OF BOARD: The weight of evidence shows an agreed upon interpretation, between the management and the General Chairman, of Rule 24

to the effect that in cases of point seniority, preference will be given to applicants employed in the same department before those employed in other departments. (See Award No. 614.)

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 employe involved in this dispute are respectively carrier and employe 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 evidence does not sustain the claim of R. P. Wheeler.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1938.