

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: "That A. E. Chittenden, who was working as frog repairer on the Eastern Division of the St. Louis-San Francisco Railway Company, lost his seniority rights in the Maintenance of Way Department when he accepted a position in the Engineering Department; said position being an excepted position under agreement effective July 1, 1922, and revised November 11, 1925, between the St. Louis-San Francisco Railway Company and the Brotherhood of Clerks, Freight Handlers Station and Storehouse Employees, account having remained on that position more than thirty days."

JOINT STATEMENT OF FACTS: "A. E. Chittenden entered the service of the St. Louis-San Francisco Railway Company as a civil engineer March 15, 1927. Account reductions in force he was unable to continue in service in that department and was placed in service as frog repairer, Eastern Division, July 1, 1931. He continued in such employment until December 16, 1936, when he was appointed Assistant Division Engineer, Eastern Division, a new position created effective that date. He continued as such until July 1, 1937 when he was displaced account not satisfactorily filling the position, and returned to service Eastern Division as frog repairer, displacing George Miller who had bid in Chittenden's vacancy at the time Chittenden was appointed Assistant Division Engineer."

"Frog repairers are covered by Agreement with Maintenance of Way Employees and were placed under such Agreement effective August 15, 1934. They hold Division seniority rights."

"A. E. Chittenden while working as frog repairer was carried on the seniority list with seniority date of July 1, 1931. He was shown on the Eastern Division frog repairers' seniority roster issued in January 1937, and dated January 1, 1937, with seniority date of July 1, 1931 and has been so shown on all rosters issued since frog repairers were placed under the Agreement between the Maintenance of Way Employees up to and including the present date."

POSITION OF EMPLOYEES: "The employees did not think that the company would even consider permitting Mr. Chittenden to return to his position as frog repairer, after he had remained out of the Maintenance of Way Department beyond the 30 days that he was allowed to qualify in under Rule 26, Article II, Maintenance of Way Agreement, Revised September 1, 1937, and which Rule was in all previous Agreements, reading:

'Rule 26, Article II. Employees transferred from one department to another shall have thirty (30) days in which to qualify, qualifying and remaining therein over thirty (30) days, shall lose all seniority rights in the department in which formerly employed.'

"As referred to above, roadmasters report to the Division Engineer the same as the Assistant Division Engineer does. There have been several instances where men promoted from section foremen to roadmasters have been relieved of their roadmasters' duties and returned to their position as section foremen with seniority unimpaired under Rule 9, Article III, without any question having been raised by the Brotherhood of Maintenance of Way Employees.

"The first complaint from the Maintenance of Way Organization about carrying Chittenden on frog repairer's seniority list after he was appointed Assistant Division Engineer, was when General Chairman Shoemaker handled with Superintendent Clary under date of July 7, 1937, which was after Chittenden had been displaced as Assistant Division Engineer and exercised his seniority as frog repairer."

OPINION OF BOARD: Evidence of record indicates position of Assistant Division Engineer is an Official position within the meaning of Article III, Rule 9, therefore, Mr. Chittenden was entitled to retain his seniority standing on the Frog Repairers' seniority roster.

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 Mr. Chittenden retained his seniority rights as Frog Repairer.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1938.