

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: "Claim of System Committee of the Brotherhood that Mr. Guy V. Hoopengartner is entitled to payment of his claim under Award No. 322 and subsequent Memorandum of Agreement entered into between the Carrier and the Organization as of January 7, 1937."

EMPLOYES' STATEMENT OF FACTS: "In order to carry out the recommendations contained in the Award made by the National Railroad Adjustment Board in Award No. 322, Docket CL-261, Memorandum of Agreement was entered into between the Carrier and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, on January 7, 1937.

"Sometime subsequent to entering into the Memorandum of Agreement as of January 7, 1937, claimants were paid under Award No. 322, Docket CL-261, but Carrier denied payment to claimant Guy V. Hoopengartner, who was one of the parties named in said Docket."

CARRIER'S STATEMENT OF FACTS: "Under date November 26, 1935, the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, submitted ex-parte to the National Railroad Adjustment Board, Third Division, the following claim, To Wit:

'Claim of A. H. Keegan, G. Montague, C. A. Clifford, R. Montague, O. Odin, W. B. Thompson, L. A. Lawson, E. J. Scott, A. E. Johnson, J. E. Bachman, Guy V. Hoopengartner, Florence Hutchins, Helen Clerkin, Lulu M. Donovan, Mary G. Ross, Myrtle Hengstler, Elizabeth H. Read and Ethel Montague, that the action of the carrier in allowing employees of the Assistant General Managers' Seniority Districts at El Paso, Texas and Los Angeles, California, to displace employees of the Superintendents' Seniority Districts at El Paso and Los Angeles respectively, was in violation of rules of the current agreement between the Southern Pacific Company (Pacific Lines) and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, effective February 1, 1922, revised to January 1, 1924, and that all the above named employees of the Superintendents' Seniority Districts who suffered loss of earnings and/or positions as a result of such displacements, be restored to positions from which displaced and compensated for actual wage loss.'

"On the twentieth (20th) day of October, 1936, the Board made the following Award, said Award being described and designated as National

OPINION OF BOARD: The dispute between the parties in this case arises out of a disagreement as to the meaning and proper interpretation of an agreement entered into by them on January 7, 1937 governing the application of Award No. 322. In Docket CL-261, covered by Award No. 322, this Division held that when Carrier abolished three Assistant General Managers' offices that certain employees of these offices had improperly exercised seniority rights in the Superintendent's office of the Rio Grande Division at El Paso, Texas, which constituted a separate seniority district.

The parties to this dispute agree that the claimant here, Guy V. Hoopen-garner was one of the claimants covered by Award 322, that he suffered wage loss as the result of the violation of the schedule agreement, and that he has not been paid any wage loss suffered by him.

The differences between the parties flow from the meaning of Sections 5 and 6 of the Memorandum Agreement of January 7, 1937, referred to above, Section 5 of said agreement provided in part as follows:

"It is further acknowledged and agreed that * * * * * the employee who held seniority on Clerks' Seniority Roster No. 1 of the Rio Grande Division, who was supplanted by F. M. L. Barger being appointed to position of Chief Clerk; also employees on said Roster, who were displaced by other employees and/or who made displacements as a result of F. M. L. Barger being appointed Chief Clerk, did not, and will not, subject the Company to payment of any claim in favor of those who made displacements and/or those who were displaced; nor to replacement of employees who may have been affected by such displacements."

Claimant here was displaced from the position then held by him as the direct result of the displacement made by F. M. L. Barger and the parties agree that he is entitled to no compensation as the result of such displacement. However, claimant was unable to place himself upon another position because two other employees,—Ruth Williams and Stacey Burgess—affected by the abolishment of the three Assistant General Managers' offices, were improperly permitted to exercise seniority rights over him. This resulted in placing claimant in the status of a furloughed or extra employee.

Claimant's right to compensation depends therefore upon whether Section 6 is applicable to him. This section provided in part:

"* * * * * It is further agreed that, any displacements made by either or both, Ruth Williams and Stacey Burgess of an employee and/or employees who held seniority on Clerks' Seniority Roster No. 1 of the Rio Grande Division, with a date prior to October 1, 1932, also any employees who held seniority on Clerks' Seniority Roster No. 1 of the Rio Grande Division, with a date prior to October 1, 1932, who were displaced as a direct result of displacements made by either or both Ruth Williams and Stacey Burgess, will, during the period such employees were available for service, provided they are one of the claimants specifically designated in the Board Award No. 322, be reimbursed for any net wage loss which may have been sustained by them and each of them, as a direct result of such displacements, and that payment for their net wage loss shall be made in accordance with the provisions of Board Award No. 322." * * * * *

Carrier contends that since claimant was not **actually** displaced by either Ruth Williams or Stacey Burgess that Section 6 has no application to him. Whether this contention is sound depends upon the meaning of the word "displacement" as used in the section.

The parties agree that had Ruth Williams or Stacey Burgess actually displaced claimant that he would be entitled to compensation under said section. As pointed out above, however, they made displacements at the same time that Barger was placed on the position of Chief Clerk to Super-

intendent of the Rio Grande Division, which resulted in the displacement of claimant from the position then held by him. There was therefore no opportunity for claimant to place himself elsewhere on a position which belonged to him under the prevailing agreement between the parties before Ruth Williams and Stacey Burgess improperly exercised their seniority rights over him.

The Board is unable to agree with Carrier's contention that it was necessary for either Ruth Williams or Stacey Burgess to actually displace claimant from a position to entitle him to the benefits of Section 6 of the Agreement of January 7, 1937. Such contention calls for too narrow an interpretation of the word "displace." Claimant, who held seniority rights over the three employees in question, was just as effectively displaced by the placing of either of these employees on a position to which he was entitled before he got there as he would have been had he gotten there first. Among the definitions of displace is "to take the place of, especially by pushing or crowding," and that is exactly what was done in this case. The "displacement" made by the employees in question was merely the act of taking a place (position) which belonged to claimant in this case.

The claim will be sustained.

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 carrier has not correctly applied the provisions of Award No. 322, and the memorandum of agreement of January 7, 1937, to Guy V. Hoopengartner.

AWARD

Claim sustained in accordance with the provisions of Award No. 322, and the Agreement of January 7, 1937 as applied in Opinion of Board, for the period October 1, 1932 to June 21, 1935.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 11th day of July, 1939.