

Award No. 889
Docket No. MW-892

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ERIE RAILROAD COMPANY

(C. E. Denney and John A. Hadden, Trustees)

STATEMENT OF CLAIM: "That R. S. Hendrickson was not permitted to exercise his rights over Acting Plumber Helper Osterhout, March 1st, 1937 when displaced by C. S. Strong, Plumber, in accordance with Rule 1-C of agreement with Maintenance of Way employees, dated August 1, 1936, resulting in loss of time until June 11, 1937."

JOINT STATEMENT OF FACTS: "R. S. Hendrickson was employed January 18, 1937 as Plumber to fill temporary vacancy at Susquehanna, Pa. No other bids were received for this temporary position.

"R. S. Hendrickson was displaced by Plumber C. S. Strong, February 27, 1937 account C. S. Strong being an older man and bidding in the job in accordance with Rule 5-B.

"At this time M. H. Osterhout was working in the position of temporary Plumber Helper which he had received on bid of October 19, 1936 account no plumber or plumber helper bidding on it. Osterhout is a carpenter helper with service from October 14, 1928.

"When laid off, R. S. Hendrickson made no direct bid to Plumber Foreman Burns or Master Carpenter R. Pierce for job of temporary plumber helper held by M. H. Osterhout. However, on March 6, 1937, Local Chairman Fritzie made request in connection with Mr. Hendrickson's rights in letter to Division Engineer H. J. Wecheider, as per attached (Exhibit 'A'). The M. of W. Organization interpret this as a bid in writing for the position in question account of Mr. Hendrickson entitled to rights from January 18, 1937.

"The time claimed by R. S. Hendrickson as worked on temporary position of plumber helper by M. H. Osterhout from March 8, 1937 to June 10, 1937 is as follows:

	Pro rata rate	
March 8th to 15th	56½ Hrs.	
16th to 31st	80 "	
April 1st to 15th	96 "	
16th to 30th	104 "	
May 1st to 15th	89 "	
16th to 31st	88 "	
June 1st to 10th	80 "	
593½ " @ \$0.54 per hour.		

words, if Carpenter Helper Osterhout had made application for and was assigned to a temporary vacancy as a Carpenter in Class 5, then under the rule he would not accumulate any seniority as a Carpenter. The only time that he would accumulate seniority was when application and assignment was made as a result of a bulletin to the higher class (occupation).

- "3. Osterhout has been in the service approximately 30 years working in various occupations and has maintained his home at Susquehanna, Pa. When this vacancy was advertised he made application for it with the thought of getting home where he could work for a period, which he estimated would be two or three months, and he felt that under the rules at the end of this time he could return and take up his rights as a Carpenter or Carpenter Helper, although no representative of the management informed him that his understanding of the rules was correct, he merely discussing it with fellow employees.
- "4. Hendrickson's claim, even though it were justified under the rules, would not be in order in that he failed to file proper application for such displacement rights within the ten (10) days specified in Rule 1 (c)."

OPINION OF BOARD: The case turns on whether Osterhout, a carpenter's helper in Class 5, filling a temporary vacancy as a plumber's helper in Class 6, was performing "temporary service in a **higher class**" under Rule 1 (a); if he was, such service gave him no seniority in Class 6. The carrier admits that if Osterhout, as a carpenter's helper, had performed temporary service as a carpenter he would be serving in a "higher class" within Rule 1 (a) and would accumulate no seniority as a carpenter; but the carrier contends that Osterhout simply shifted from Class 5 to Class 6, lost his rights in Class 5 and began to accumulate seniority in Class 6, so that he could not be displaced by Hendrickson, who had entered Class 6 subsequent to Osterhout.

The evidence indicates that Osterhout did not intend to leave Class 5 permanently, and since the Class 6 positions carry higher rates than the Class 5 we think that Osterhout was performing temporary service in a "higher class" within the meaning of Rule 1 (a) and therefore accumulated no seniority in Class 6.

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 employee involved in this dispute are respectively carrier and employee 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 Hendrickson was held off position in violation of Rules.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of July, 1939.